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GOVERNMENT OF INDIA

MINISTRY OF LAW

THE UNREPEALED CENTRAL ACTS

WITH

CHRONOLOGICAL TABLE AND INDEX

Volume II

From 1872 to 1881, both inclusive

(SECOND EDITION)

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PREFACE.

This Volume has been prepared on the same lines as the previous edition published by the Reforms Office in 1938. The Acts included in this Volume have been printed as modified upto the 1st February, 1950.

K. V. K SUNDARAM, I.C.S.,

Secretary,

Ministry of Law,

Government of India.

NEW DELHI,

The 2nd January, 1951.

XIV
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LIST OF ABBREVIATIONS USED.

A.O. 1937. . .	. for Government of India (Adaptation of Indian Laws) Order, 1937, as modified by the Government of India (Adaptation of Indian Laws) Supplementary Order, 1937, and the Government of India (Adaptation of Indian Laws) Amendment Order, 1940.
A O. 1948. , .	. „ Indian Independence (Adaptation of Central Acts and Ordinances) Order, 1948.
A.O. 1950 . .	. „ Adaptation of Laws Order, 1950.
B. & O. . . .	. „ Bihar and Orissa.
Ben. . . .	. „ Bengal.
Bom. . . .	. „ Bombay.
Ch. . . .	. „ Chapter.
Cl. . . .	. „ Clause.
Coll. Stat. Ind. .	. „ Collection of Statutes relating to India.
C.P. . . .	. „ Central Provinces.
Gen. R. & O. . .	. „ General Statutory Rules and Orders.
G.G. in C. . .	. „ Governor General in Council.
G. of I. . . .	. „ Government of India.
Govt. . . .	. „ Government.
Ins. . . .	. „ Inserted.
L.G. . . .	. „ Local Government.
Mad. . . .	. „ Madras.
Pt. . . .	. „ Part.
Pun. . . .	. „ Punjab.
Reg. . . .	. „ Regulation.
Rep. . . .	. „ Repealed.
S.	. „ Section.
Sch. . . .	. „ Schedule.
Subs. . . .	. „ Substituted.
U.P. . . .	. „ United Provinces.

CHRONOLOGICAL TABLE OF THE UNREPEALED CENTRAL ACTS, 1872—81.

1 Year.	2 No.	3 Short title or Subject.	4 Page.
1872	I	The Indian Evidence Act, 1872. . . .	1
	III	The Punjab Marriage Act, 1872	65
	IV	The Punjab Laws Act, 1872	77
	IX	The Indian Contract Act, 1872	89
	XV	The Indian Christian Marriage Act, 1872 . .	153
	XXII	The Act X of 1859 Amendment Act, 1872 . .	Not printed.[1]
1873	III	The Madras Civil Courts Act, 1873 . . .	191
	V	The Government Savings Banks Act, 1873 . .	201
	VIII	The Northern India Canal and Drainage Act, 1873	205
	X	The Indian Oaths Act, 1873	235
	XVI	The North-Western Provinces Village and Road Police Act, 1873	240
1874	III	The Married Women's Property Act, 1874 . .	244
	IV	The Foreign Recruiting Act, 1874 . . .	248
	XV	The Laws Local Extent Act, 1874 . . .	250
1875	IX	The Indian Majority Act, 1875	270
	XVIII	The Indian Law Reports Act, 1875 . . .	272
	XX	The Central Provinces Laws Act, 1875 . .	273
1876	II	The Burma Land and Revenue Act, 1876 . .	Not printed.[2]
	VI	The Chota Nagpur Incumbered Estates Act, 1876	278
	IX	The Native Coinage Act, 1876	297
	X	The Bombay Revenue Jurisdiction Act, 1876 .	300

[1] Practically obsolete.
[2] Relates to Burma.

CHRONOLOGICAL TABLE OF THE UNREPEALED CENTRAL ACTS, 1872—81—(*continued*).

1 Year.	2 No.	3 Short title or Subject.	4 Page.
1876—*contd.*	XV	The Bombay Municipal Debentures Act, 1876 .	308
	XVIII	The Oudh Laws Act, 1876	310
	XIX	The Dramatic Performances Act, 1876 . .	328
	XX	The Bhaunagar Act, 1876	331
1877	I	The Specific Relief Act, 1877	335
	IV	The Presidency Magistrates (Court-fees) Act, 1877	369
	IX	The Punjab Murderous Outrages (Amendment) Act, 1877	369
	XIV	The Broach and Kaira Incumbered Estates Act, 1877	370
1878	I	The Opium Act, 1878	371
	VI	The Indian Treasure-trove Act, 1878 . . .	380
	VIII	The Sea Customs Act, 1878	387
	XI	The Indian Arms Act, 1878	484
	XII	The Punjab Laws (Amendment) Act, 1878 .	498
	XV	Husainabad Endowment	498
	XVII	The Northern India Ferries Act, 1878. . .	504
1879	VI	The Elephants Preservation Act, 1879 . .	515
	XIV	The Hackney-carriage Act, 1879 . . .	517
	XVII	The Dekkhan Agriculturists' Relief Act, 1879 .	521
	XVIII	The Legal Practitioners Act, 1879 . . .	559
	XIX	The Raipur and Khattra Laws Act, 1879 . .	579
1880	I	The Religious Societies Act, 1880 . . .	580
	II	The Burma District Cesses and Rural Police Act, 1880	Not printed.[1]
	V	The Burma Boundaries Act, 1880 . . .	Not printed.[1]

[1] Practically obsolete.

CHRONOLOGICAL TABLE OF THE UNREPEALED CENTRAL ACTS, 1872—81—(*concluded*)

1 Year.	2 No.	3 Short title or Subject.	4 Page.
1880—*contd.*	XII	The Kazis Act, 1880	584
	XIII	The Vaccination Act, 1880	585
1881	I	Taj Mahal's Pension Act, 1881	594
	XI	The Municipal Taxation Act, 1881 . . .	598
	XIII	The Fort William Act, 1881	601
	XVI	The Obstructions in Fairways Act, 1881 . .	605
	XVIII	The Central Provinces Land-revenue Act, 1881 .	Not printed.[1]
	XXI	The Broach and Kaira Incumbered Estates Act, 1881	608
	XXV	The Banki Laws Act, 1881	622
	XXVI	The Negotiable Instruments Act, 1881 . .	623

[1] Relates to land-revenue, *see* Mad. Code, Vol. I.

THE

UNREPEALED CENTRAL ACTS

Volume II

THE INDIAN EVIDENCE ACT, 1872

CONTENTS

PREAMBLE.

PART I

RELEVANCY OF FACTS

CHAPTER I

PRELIMINARY

SECTIONS.

1. Short title.
   Extent.
   Commencement of Act.
2. [*Repealed.*]
3. Interpretation-clause.
4. "May Presume."
   "Shall presume."
   "Conclusive proof."

CHAPTER II

OF THE RELEVANCY OF FACTS.

5. Evidence may be given of facts in issue and relevant facts.
6. Relevancy of facts forming part of same transaction.
7. Facts which are the occasion, cause or effect of facts in issue.
8. Motive, preparation and previous or subsequent conduct.

SECTIONS.

9. Facts necessary to explain or introduce relevant facts.
10. Things said or done by conspirator in reference to common design.
11. When facts not otherwise relevant become relevant.
12. In suits for damages, facts tending to enable Court to determine amount, are relevant.
13. Facts relevant when right or custom is in question.
14. Facts showing existence of state of mind, or of body or bodily feeling.
15. Facts bearing on question whether act was accidental or intentional.
16. Existence of course of business when relevant.

ADMISSIONS.

17. Admission defined.
18. Admission—
by party to proceeding or his agent;
by suitor in representative character;
by party interested in subject-matter;
by person from whom interest derived.
19. Admissions by persons whose position must be proved as against party to suit.
20. Admissions by persons expressly referred to by party to suit.
21. Proof of admissions against persons making them, and by or on their behalf.
22. When oral admissions as to contents of documents are relevant.
23. Admissions in civil cases when relevant.
24. Confession caused by inducement, threat or promise, when irrelevant in criminal proceeding.
25. Confession to police-officer not to be proved.
26. Confession by accused while in custody of police not to be proved against him.
27. How much of information received from accused may be proved.
28. Confession made after removal of impression caused by inducement, threat or promise, relevant.
29. Confession otherwise relevant not to become irrelevant because of promise of secrecy, etc.
30. Consideration of proved confession affecting person making it and others jointly under trial for same offence.
31. Admissions not conclusive proof, but may estop.

STATEMENTS BY PERSONS WHO CANNOT BE CALLED AS WITNESSES.

SECTIONS.

32. Cases in which statement of relevant fact by person who is dead or cannot be found, etc., is relevant.
When it relates to cause of death;
or is made in course of business;
or against interest of maker;
or gives opinion as to public right or custom, or matters of general interest;
or relates to existence of relationship;
or is made in will or deed relating to family affairs;
or in document relating to transaction mentioned in section 13, clause (*a*);
or is made by several persons, and expresses feelings relevant to matter in question.
33. Relevancy of certain evidence for proving, in subsequent proceeding, the truth of facts therein stated.

STATEMENTS MADE UNDER SPECIAL CIRCUMSTANCES.

34. Entries in books of account when relevant.
35. Relevancy of entry in public record, made in performance of duty.
36. Relevancy of statements in maps, charts and plans.
37. Relevancy of statement as to fact of public nature contained in certain Acts or notifications.
38. Relevancy of statements as to any law contained in law-books.

HOW MUCH OF A STATEMENT IS TO BE PROVED.

39. What evidence to be given when statement forms part of a conversation, document, book, or series of letters or papers.

JUDGMENTS OF COURTS OF JUSTICE WHEN RELEVANT.

40. Previous judgments relevant to bar a second suit or trial.
41. Relevancy of certain judgments in probate, etc., jurisdiction.
42. Relevancy and effect of judgments, orders or decrees, other than those mentioned in section 41.
43. Judgments, etc., other than those mentioned in sections 40 to 42, when relevant.
44. Fraud or collusion in obtaining judgment, or incompetency of Court, may be proved.

OPINIONS OF THIRD PERSONS WHEN RELEVANT.

SECTIONS.

45. Opinions of experts.
46. Facts bearing upon opinions of experts.
47. Opinion as to handwriting, when relevant.
48. Opinion as to existence of right or custom, when relevant.
49. Opinion as to usages, tenets, etc., when relevant.
50. Opinion on relationship, when relevant.
51 Grounds of opinion, when relevant.

CHARACTER WHEN RELEVANT.

52. In civil cases, character to prove conduct imputed, irrelevant.
53. In criminal cases, previous good character relevant.
54. Previous bad character not relevant, except in reply.
55. Character as affecting damages.

PART II.

ON PROOF.

CHAPTER III.

FACTS WHICH NEED NOT BE PROVED.

56. Fact judicially noticeable need not be proved.
57. Facts of which Court must take judicial notice.
58. Facts admitted need not be proved.

CHAPTER IV.

OF ORAL EVIDENCE.

59. Proof of facts by oral evidence.
60. Oral evidence must be direct.

CHAPTER V.

OF DOCUMENTARY EVIDENCE.

61. Proof of contents of documents.
62. Primary evidence.
63. Secondary evidence.
64. Proof of documents by primary evidence.
65. Cases in which secondary evidence relating to documents may be given.

SECTIONS.

66. Rules as to notice to produce.
67. Proof of signature and handwriting of person alleged to have signed or written document produced.
68. Proof of execution of document required by law to be attested.
69. Proof where no attesting witness found.
70. Admission of execution by party to attested document.
71. Proof when attesting witness denies the execution.
72. Proof of document not required by law to be attested.
73. Comparison of signature, writing or seal with others, admitted or proved.

PUBLIC DOCUMENTS.

74. Public documents.
75. Private documents.
76. Certified copies of public documents.
77. Proof of documents by production of certified copies.
78. Proof of other official documents.

PRESUMPTION AS TO DOCUMENTS.

79. Presumption as to genuineness of certified copies.
80. Presumption as to documents produced as record of evidence.
81. Presumption as to Gazettes, newspapers, private Acts of Parliament and other documents.
82. Presumption as to document admissible in England without proof of seal or signature.
83. Presumption as to maps or plans made by authority of Government.
84. Presumption as to collections of laws and reports of decisions.
85. Presumption as to powers-of-attorney.
86. Presumption as to certified copies of foreign judicial records.
87. Presumption as to books, maps and charts.
88. Presumption as to telegraphic messages.
89. Presumption as to due execution, etc., of documents not produced.
90. Presumption as to documents thirty years old.

CHAPTER VI.

OF THE EXCLUSION OF ORAL BY DOCUMENTARY EVIDENCE.

91. Evidence of terms of contracts, grants and other dispositions of property reduced to form of document.

SECTIONS.

92. Exclusion of evidence of oral agreement.
93. Exclusion of evidence to explain or amend ambiguous document.
94. Exclusion of evidence against application of document to existing facts.
95. Evidence as to document unmeaning in reference to existing facts.
96. Evidence as to application of language which can apply to one only of several persons.
97. Evidence as to application of language to one of two sets of facts, to neither of which the whole correctly applies.
98. Evidence as to meaning of illegible characters, etc.
99. Who may give evidence of agreement varying terms of document.
100. Saving of provisions of Indian Succession Act relating to wills.

PART III.

PRODUCTION AND EFFECT OF EVIDENCE.

CHAPTER VII.

OF THE BURDEN OF PROOF.

101. Burden of proof.
102. On whom burden of proof lies.
103. Burden of proof as to particular fact.
104. Burden of proving fact to be proved to make evidence admissible.
105. Burden of proving that case of accused comes within exceptions.
106. Burden of proving fact especially within knowledge.
107. Burden of proving death of person known to have been alive within thirty years.
108. Burden of proving that person is alive who has not been heard of for seven years.
109. Burden of proof as to relationship in the cases of partners, landlord and tenant, principal and agent.
110. Burden of proof as to ownership.
111. Proof of good faith in transactions where one party is in relation of active confidence.
112. Birth during marriage conclusive proof of legitimacy.
113. Proof of cession of territory.
114. Court may presume existence of certain facts.

CHAPTER VIII.

ESTOPPEL.

SECTIONS.

115. Estoppel.
116. Estoppel of tenant;
and of licensee of person in possession.
117. Estoppel of acceptor of bill of exchange, bailee or licensee.

CHAPTER IX.

OF WITNESSES.

118. Who may testify.
119. Dumb witnesses.
120. Parties to civil suit, and their wives or husbands.
Husband or wife of person under criminal trial.
121. Judges and Magistrates.
122. Communications during marriage.
123. Evidence as to affairs of State.
124. Official communications.
125. Information as to commission of offences.
126. Professional communications.
127. Section 126 to apply to interpreters, etc.
128. Privilege not waived by volunteering evidence.
129. Confidential communications with legal advisers.
130. Production of title-deeds of witness not a party.
131. Production of documents which another person having possession could refuse to produce.
132. Witness not excused from answering on ground that answer will criminate.
Proviso.
133. Accomplice.
134. Number of witnesses.

CHAPTER X.

OF THE EXAMINATION OF WITNESSES.

135. Order of production and examination of witnesses.
136. Judge to decide as to admissibility of evidence.
137. Examination-in-chief.
Cross-examination.
Re-examination.
138. Order of examinations.
Direction of re-examination.
139. Cross-examination of person called to produce a document
140. Witnesses to character.

SECTIONS.

141. Leading questions.
142. When they must not be asked.
143. When they may be asked.
144. Evidence as to matters in writing.
145. Cross-examination as to previous statements in writing.
146. Questions lawful in cross-examination.
147. When witness to be compelled to answer.
148. Court to decide when question shall be asked and when witness compelled to answer.
149. Question not to be asked without reasonable grounds.
150. Procedure of Court in case of question being asked without reasonable grounds.
151. Indecent and scandalous questions.
152. Questions intended to insult or annoy.
153. Exclusion of evidence to contradict answers to questions testing veracity.
154. Question by party to his own witness.
155. Impeaching credit of witness.
156. Questions tending to corroborate evidence of relevant fact, admissible.
157. Former statements of witness may be proved to corroborate later testimony as to same fact.
158. What matters may be proved in connection with proved statement relevant under section 32 or 33.
159. Refreshing memory.
When witness may use copy of document to refresh memory.
160. Testimony to facts stated in document mentioned in section 159.
161. Right of adverse party as to writing used to refresh memory.
162. Production of documents.
Translation of documents.
163. Giving, as evidence, of document called for and produced on notice.
164. Using, as evidence, of document production of which was refused on notice.
165. Judge's power to put questions or order production.
166. Power of jury or assessors to put questions.

CHAPTER XI.

OF IMPROPER ADMISSION AND REJECTION OF EVIDENCE.

167. No new trial for improper admission or rejection of evidence.

SCHEDULE.—[*Repealed.*]

(*Chapter I.—Preliminary.*)

ACT No. I of 1872[1].

[*15th March, 1872.*]

THE INDIAN EVIDENCE ACT, 1872.

WHEREAS it is expedient to consolidate, define and amend the law of Evidence; It is hereby enacted as follows:— Preamble

PART I.

RELEVANCY OF FACTS.

CHAPTER I.

PRELIMINARY.

1. This Act may be called the Indian Evidence Act, 1872. Short title

It extends to [2][the whole of India ~~[except Part B States]~~[3] and applies to all judicial proceedings in or before any Court, including Courts-martial, [4][other than Courts-martial convened under the Army Act,] [5][the Naval Discipline Act or [6]* * * [the Indian Navy (Discipline) Act, 1934.] [7][or the Air Force Act] but not to affidavits[8] presented to any Court or officer, not to proceedings before an arbitrator; Extent.

44 & 45 Vict., c. 58
29 & 30 Vict., c. 109.
XXXIV of 1934.
7 Geo. 5, c. 51.

---

[1] For Statement of Objects and Reasons, *see* Gazette of India, 1868, p. 1574; for the draft or preliminary Report of the Select Committee, dated 31st March, 1871, *see ibid*, 1871, Pt. V, p. 273, and for the second Report of the Select Committee, dated 30th January, 1872, *see ibid*, 1872, Pt. V, p. 34; for discussions in Council, *see ibid*, 1868 Supplement, pp. 1060 and 1209, *ibid*, 1871, Extra Supplement, p. 42, and Supplement, p. 1641, and *ibid*, 1872, pp. 136 and 230.

[2] Subs. by the A. O. 1950 for "all the Provinces of India" which had been subs. by the A. O. 1948 for "the whole of British India".

[3] This Act has been extended to Berar by the Berar Laws Act, 1941 (4 of 1941) and has been declared to be in force in the Sonthal Parganas, by the Sonthal Parganas Settlement Regulation (3 of 1872). s. 3; in Panth Piploda by the Panth Piploda Laws Regulation, 1929 (1 of 1929); in the Khondmals District, by the Khondmals Laws Regulation, 1936 (4 of 1936), s. 3 and Sch.; and in the Angul District, by the Angul Laws Regulation, 1936 (5 of 1936), s. 3 and Sch.; also by notification under s. 3 (*a*) of the Scheduled Districts Act, 1874 (14 of 1874); in the following Scheduled Districts, namely, the Districts of Hazaribagh, Lohardaga (now the Ranchi District—*see* Calcutta Gazette, 1899, Pt. I, p. 44), and Manbhum and Pargana Dhalbhum and the Kolhan in the District of Singhbhum —*see* Gazette of India. 1881, Pt. I, p. 504 [the Lohardaga or Ranchi District included at this time the Palamau District, separated in 1894]; and the Tarai of the Province of Agra, *ibid*, 1876, Pt. I, p. 505; Ganjam and Vizagapatam—*see* Gazette of India, 1899, Pt. I, p. 720.

[4] Ins. by the Repealing and Amending Act, 1919 (18 of 1919), s 2 and Sch. I. *See* s. 127 of the Army Act (44 and 45 Vict., c. 58).

[5] Ins. by the Amending Act, 1934 (35 of 1934), s. 2 and Sch.

[6] The words "that Act as modified by" rep. by the A. O. 1950.

[7] Ins. by the Repealing and Amending Act, 1927 (10 of 1927), s. 2 and Sch. I.

[8] As to practice relating to affidavits, *see* the Code of Civil Procedure, 1908 (Act 5 of 1908), s. 30 (*c*) and Sch. I, Order XIX, *see* also the Code of Criminal Procedure 1898 (Act 5 of 1898), ss. 539 and 539-A.

Commencement of Act.

And it shall come into force on the first day of September, 1872.

2. [*Repeal of enactments.*] *Rep. by the Repealing Act, 1938 (I of 1938), s. 2 and Sch.*

Interpretation clause.

3. In this Act the following words and expressions are used in the following senses, unless a contrary intention appears from the context:—

"Court."

"Court" includes all Judges[1] and Magistrates[2], and all persons, except arbitrators, legally authorized to take evidence.

"Fact."

"Fact" means and includes—

(1) any thing, state of things, or relation of things capable of being perceived by the senses;

(2) any mental condition of which any person is conscious.

Illustrations.

(*a*) That there are certain objects arranged in a certain order in a certain place, is a fact.

(*b*) That a man heard or saw something, is a fact.

(*c*) That a man said certain words, is a fact.

(*d*) That a man holds a certain opinion, has a certain intention, acts in good faith or fraudulently, or uses a particular word in a particular sense, or is or was at a specified time conscious of a particular sensation, is a fact.

(*e*) That a man has a certain reputation, is a fact.

"Relevant."

One fact is said to be relevant to another when the one is connected with the other in any of the ways referred to in the provisions of this Act relating to the relevancy of facts.

"Facts in issue."

The expression "facts in issue" means and includes—

any fact from which, either by itself or in connection with other facts, the existence, non-existence, nature or extent of any right, liability, or disability, asserted or denied in any suit or proceeding, necessarily follows.

Explanation.—Whenever, under the provisions of the law for the time being in force relating to Civil Procedure[3], any Court records an issue of fact, the fact to be asserted or denied in the answer to such issue is a fact, in issue.

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[1] *Cf.* the Code of Civil Procedure, 1908 (Act 5 of 1908), s. 2, the Indian Penal Code (Act 45 of 1860), s. 19, and, for a definition of "District Judge", the General Clauses Act, 1897 (10 of 1897), s. 3 (*17*).

[2] *Cf.* the General Clauses Act, 1897 (10 of 1897), s. 3 (32) and Code of Criminal Procedure 1898 (Act 5 of 1898).

[3] *See* now the Code of Civil Procedure, 1908 (5 of 1908); as to the settlement of issues, *see* Sch. I, Order XIV.

Illustrations.

A is accused of the murder of B.
At his trial the following facts may be in issue:—
that A caused B's death;
that A intended to cause B's death;
that A had received grave and sudden provocation from B;
that A, at the time of doing the act which caused B's death, was, by reason of unsoundness of mind, incapable of knowing its nature.

"Document"[1] means any matter expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means, intended to be used, or which may be used, for the purpose of recording that matter. "Document."

Illustrations.

A writing[2] is a document:
Words printed, lithographed or photographed are documents:
A map or plan is a document:
An inscription on a metal plate or stone is a document:
A caricature is a document.

"Evidence" means and includes— "Evidence."

(1) all statements which the Court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry;

such statements are called oral evidence;

(2) all documents produced for the inspection of the Court; such documents are called documentary evidence.

A fact is said to be proved when, after considering the matters before it, the Court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists. "Proved."

A fact is said to be disproved when, after considering the matters before it, the Court either believes that it does not exist, or considers its non-existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it does not exist. "Disproved."

A fact is said not to be proved when it is neither proved nor disproved. "Not proved."

[3]["State" means a Part A State or a Part C State. and "States" means all the territories for the time being comprised within Part A States and Part C States.]

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[1] *Cf.* the Indian Penal Code (45 of 1860), s. 29 and the General Clauses Act, 1897 (10 of 1897), s. 3 (*18*).

[2] *Cf.* definition of "writing" in the General Clauses Act, 1897 (10 of 1897), s. 3 (65).

[3] Ins. by the A. O. 1950.

"May presume."

4. Whenever it is provided by this Act that the Court may presume a fact, it may either regard such fact as proved, unless and until it is disproved, or may call for proof of it:

"Shall presume."

Whenever it is directed by this Act that the Court shall presume a fact, it shall regard such fact as proved, unless and until it is disproved:

"Conclusive proof."

When one fact is declared by this Act to be conclusive proof of another, the Court shall, on proof of the one fact, regard the other as proved, and shall not allow evidence to be given for the purpose of disproving it.

CHAPTER II.

OF THE RELEVANCY OF FACTS.

Evidence may be given of facts in issue and relevant facts.

5. Evidence may be given in any suit or proceeding of the existence or non-existence of every fact in issue and of such other facts as are hereinafter declared to be relevant, and of no others.

Explanation.—This section shall not enable any person to give evidence of a fact which he is disentitled to prove by any provision of the law for the time being in force relating to Civil Procedure.[1]

Illustrations.

(*a*) A is tried for the murder of B by beating him with a club with the intention of causing his death.

At A's trial the following facts are in issue:—

A's beating B with the club;
A's causing B's death by such beating;
A's intention to cause B's death.

(b) A suitor does not bring with him, and have in readiness for production at the first hearing of the case, a bond on which he relies. This section does not enable him to produce the bond or prove its contents at a subsequent stage of the proceedings, otherwise than in accordance with the conditions prescribed by the Code of Civil Procedure.[1]

Relevancy of facts forming part of same transaction.

6. Facts which, though not in issue, are so connected with a fact in issue as to form part of the same transaction, are relevant, whether they occurred at the same time and place or at different times and places.

Illustrations.

(*a*) A is accused of the murder of B by beating him. Whatever was said or done by A or B or the by-standers at the beating, or so shortly before or after it as to form part of the transaction, is a relevant fact.

(*b*) A is accused of waging war against the [2][Government of India] by taking part in an armed insurrection in which property is destroyed, troops are attacked and gaols are broken open. The occurrence of these facts is relevant, as forming part of the general transaction, though A may not have been present at all of them.

---

[1] *See* now the Code of Civil Procedure, 1908 (5 of 1908).
[2] Subs. by the A. O. 1950 for "Queen".

(*Chapter II.—Of the Relevancy of Facts.*)

(*c*) A sues B for a libel contained in a letter forming part of a correspondence. Letters between the parties relating to the subject out of which the libel arose, and forming part of the correspondence in which it is contained, are relevant facts, though they do not contain the libel itself.

(*d*) The question is, whether certain goods ordered from B were delivered to A. The goods were delivered to several intermediate persons successively. Each delivery is a relevant fact.

Facts which are the occasion, cause or effect of facts in issue.

7. Facts which are the occasions, cause or effect, immediate or otherwise, of relevant facts, or facts in issue, or which constitute the state of things under which they happened, or which afforded an opportunity for their occurrence or transaction, are relevant.

Illustrations.

(*a*) The question is, whether A robbed B.

The facts that, shortly before the robbery, B went to a fair with money in his possession, and that he showed it or mentioned the fact that he had it, to third persons, are relevant.

(*b*) The question is, whether A murdered B.

Marks on the ground, produced by a struggle at or near the place where the murder was committed, are relevant facts.

(*c*) The question is, whether A poisoned B.

The state of B's health before the symptoms ascribed to poison, and habits of B, known to A, which afforded an opportunity for the administration of poison, are relevant facts.

Motive, preparation and previous or subsequent conduct.

8. Any fact is relevant which shows or constitutes a motive or preparation for any fact in issue or relevant fact.

The conduct of any party, or of any agent to any party, to any suit or proceeding, in reference to such suit or proceeding, or in reference to any fact in issue therein or relevant thereto, and the conduct of any person an offence against whom is the subject of any proceeding, is relevant, if such conduct influences or is influenced by any fact in issue or relevant fact, and whether it was previous or subsequent thereto.

Explanation 1.—The word "conduct" in this section does not include statements, unless those statements accompany and explain acts other than statements; but this explanation is not to affect the relevancy of statements under any other section of this Act.

Explanation 2.—When the conduct of any person is relevant, any statement made to him or in his presence and hearing, which affects such conduct, is relevant.

Illustrations.

(*a*) A is tried for the murder of B.

The facts that A murdered C, that B knew that A had murdered C, and that B had tried to extort money from A by threatening to make his knowledge public, are relevant.

(*b*) A sues B upon a bond for the payment of money. B denies the making of the bond.

The fact that, at the time when the bond was alleged to be made, B required money for a particular purpose, is relevant.

(*c*) A is tried for the murder of B by poison.

The fact that, before the death of B, A procured poison similar to that which was administered to B, is relevant.

(*d*) The question is whether a certain document is the will of A.

The facts, that not long before the date of the alleged will A made inquiry into matters to which the provisions of the alleged will relate, that he consulted vakils in reference to making the will, and that he caused drafts of other wills to be prepared of which he did not approve, are relevant.

(*e*) A is accused of a crime.

The facts that, either before or at the time of, or after the alleged crime, A provided evidence which would tend to give to the facts of the case an appearance favourable to himself, or that he destroyed or concealed evidence, or prevented the presence or procured the absence of persons who might have been witnesses, or suborned persons to give false evidence respecting it, are relevant.

(*f*) The question is whether A robbed B.

The facts that, after B was robbed, C said in A's presence—"the police are coming to look for the man who robbed B," and that immediately afterwards A ran away, are relevant.

(*g*) The question is whether A owes B rupees 10,000.

The facts that A asked C to lend him money, and that D said to C in A's presence and hearing—"I advise you not to trust A, for he owes B 10,000 rupees," and that A went away without making any answer, are relevant facts.

(*h*) The question is, whether A committed a crime.

The fact that A absconded after receiving a letter warning him that inquiry was being made for the criminal, and the contents of the letter, are relevant.

(*i*) A is accused of a crime.

The facts that, after the commission of the alleged crime, he absconded, or was in possession of property or the proceeds of property acquired by the crime, or attempted to conceal things which were or might have been used in committing it, are relevant.

(*j*) The question is whether A was ravished.

The facts that, shortly after the alleged rape, she made a complaint relating to the crime, the circumstances under which, and the terms in which, the complaint was made, are relevant.

The fact that, without making a complaint, she said that she had been ravished is not relevant as conduct under this section, though it may be relevant as a dying declaration under section 32, clause (1), or as corroborative evidence under section 157.

(*k*) The question is, whether A was robbed.

The fact that, soon after the alleged robbery, he made a complaint relating to the offence, the circumstances under which, and the terms in which, the comlpaint was made, are relevant.

The fact that he said he had been robbed without making any complaint, is not relevant, as conduct under this section, though it may be relevant as a dying declaration under section 32, clause (1), or as corroborative evidence under section 157.

Facts necessary to explain or introduce relevant facts.

9. Facts necessary to explain or introduce a fact in issue or relevant fact, or which support or rebut an inference suggested by a fact in issue or relevant fact, or which establish the identity of any thing or person whose identity is relevant, or fix the time or place at which any fact in issue or relevant fact happened, or which show the relation of parties by whom any

such fact was transacted, are relevant in so far as they are necessary for that purpose.

Illustrations.

(*a*) The question is, whether a given document is the will of A.

The state of A's property and of his family at the date of the alleged will may be relevant facts.

(*b*) A sues B for a libel imputing disgraceful conduct to A; B affirms that the matter alleged to be libellous is true.

The position and relations of the parties at the time when the libel was published may be relevant facts as introductory to the facts in issue.

The particulars of a dispute between A and B about a matter unconnected with the alleged libel are irrelevant, though the fact that there was a dispute may be relevant if it affected the relations between A and B.

(*c*) A is accused of a crime.

The fact that, soon after the commission of the crime, A absconded from his house, is relevant under section 8, as conduct subsequent to and affected by facts in issue.

The fact that at the time when he left home he had sudden and urgent business at the place to which he went, is relevant, as tending to explain the fact that he left home suddenly.

The details of the business on which he left are not relevant, except in so far as they are necessary to show that the business was sudden and urgent.

(*d*) A sues B for inducing C to break a contract of service made by him with A. C, on leaving A's service, says to A—"I am leaving you because B has made me a better offer." This statement is a relevant fact as explanatory of C's conduct, which is relevant as a fact in issue.

(*e*) A, accused of theft, is seen to give the stolen property to B, who is seen to give it to A's wife. B says as he delivers it—"A says you are to hide this." B's statement is relevant as explanatory of a fact which is part of the transaction.

(*f*) A is tried for a riot and is proved to have marched at the head of a mob. The cries of the mob are relevant as explanatory of the nature of the transaction.

Things said or done by conspirator in reference to common design.

10. Where there is reasonable ground to believe that two or more persons have conspired together to commit an offence or an actionable wrong, anything said, done or written by any one of such persons in reference to their common intention, after the time when such intention was first entertained by any one of them, is a relevant fact as against each of the persons believed to be so conspiring, as well for the purpose of proving the existence of the conspiracy as for the purpose of showing that any such person was a party to it.

Illustrations.

Reasonable ground exists for believing that A has joined in a conspiracy to wage war against the [1][Government of India].

The facts that B procured arms in Europe for the purpose of the conspiracy, C collected money in Calcutta for a like object, D persuaded persons to join the conspiracy in Bombay, E published writings advocating the object in view at Agra, and F transmitted from Delhi to G at Cabul the money which C had collected at Calcutta, and the contents of a letter written by H giving an account of the conspiracy, are each relevant, both to prove the existence of the conspiracy, and to prove A's complicity in it, although he may have been ignorant of all of them, and although the persons by whom they were done were strangers to him and although they may have taken place before he joined the conspiracy or after he left it.

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[1] Subs. by the A. O. 1950, for "Queen".

(Chapter II.—Of the Relevancy of Facts.)

When facts not otherwise relevant become relevant.

11. Facts not otherwise relevant are relevant—

(1) if they are inconsistent with any fact in issue or relevant fact;

(2) if by themselves or in connection with other facts they make the existence or non-existence of any fact in issue or relevant fact highly probable or improbable.

Illustrations.

(*a*) The question is whether A committed a crime at Calcutta on a certain day.

The fact that, on that day, A was at Lahore is relevant.

The fact that, near the time when the crime was committed, A was at a distance from the place where it was committed, which would render it highly improbable, though not impossible, that he committed it, is relevant.

(*b*) The question is, whether A committed a crime.

The circumstances are such that the crime must have been committed either by A, B, C or D. Every fact which shows that the crime could have been committed by no one else and that it was not committed by either B, C or D, is relevant.

In suits for damages, facts tending to enable Court to determine amount are relevant.

12. In suits in which damages are claimed, any fact which will enable the Court to determine the amount of damages which ought to be awarded, is relevant.

Facts relevant when right or custom is in question.

13. Where the question is as to the existence of any right or custom, the following facts are relevant:—

(*a*) any transaction by which the right or custom in question was created, claimed, modified, recognized, asserted or denied, or which was inconsistent with its existence:

(*b*) particular instances in which the right or custom was claimed, recognized or exercised, or in which its exercise was disputed, asserted or departed from.

Illustration.

The question is whether A has a right to a fishery. A deed conferring the fishery on A's ancestors, mortgage of the fishery by A's father, a subsequent grant of the fishery by A's father, irreconcilable with the mortgage, particular instances in which A's father exercised the right, or in which the exercise of the right was stopped by A's neighbours, are relevant facts.

Facts showing existence of state of mind, or of body, or bodily feeling.

14. Facts showing the existence of any state of mind, such as intention, knowledge, good faith, negligence, rashness, ill-will or good-will towards any particular person, or showing the existence of any state of body or bodily feeling, are relevant, when the existence of any such state of mind or body or bodily feeling is in issue or relevant.

(*Chapter II.—Of the Relevancy of Facts.*)

[1][*Explanation 1.*—A fact relevant as showing the existence of a relevant state of mind must show that the state of mind exists, not generally, but in reference to the particular matter in question.

Explanation 2.—But where, upon the trial of a person accused of an offence, the previous commission by the accused of an offence is relevant within the meaning of this section, the previous conviction of such person shall also be a relevant fact.[2]]

Illustrations.

(*a*) A is accused of receiving stolen goods knowing them to be stolen. It is proved that he was in possession of a particular stolen article.

The fact that, at the same time, he was in possession of many other stolen articles is relevant, as tending to show that he knew each and all of the articles of which he was in possession to be stolen.

[3][(*b*) A is accused of fraudulently delivering to another person a counterfeit coin which, at the time when he delivered it, he knew to be counterfeit.

The fact that, at the time of its delivery, A was possessed of a number of other pieces of counterfeit coin is relevant.

The fact that A had been previously convicted of delivering to another person as genuine a counterfeit coin knowing it to be counterfeit is relevant.]

(*c*) A sues B for damage done by a dog of B's which B knew to be ferocious.

The facts that the dog had previously bitten X, Y and Z, and that they had made complaints to B, are relevant.

(*d*) The question is, whether A, the acceptor of a bill of exchange, knew that the name of the payee was fictitious.

The fact that A had accepted other bills drawn in the same manner before they could have been transmitted to him by the payee if the payee had been a real person, is relevant as showing that A knew that the payee was a fictitious person.

(*e*) A is accused of defaming B by publishing an imputation intended to harm the reputation of B.

The fact of previous publications by A respecting B, showing ill-will on the part of A towards B is relevant, as proving A's intention to harm B's reputation by the particular publication in question.

The facts that there was no previous quarrel between A and B, and that A repeated the matter complained of as he heard it, are relevant, as showing that A did not intend to harm the reputation of B.

(*f*) A is sued by B for fraudulently representing to B that C was solvent, whereby B, being induced to trust C, who was insolvent, suffered loss.

The fact that at the time when A represented C to be solvent, C was supposed to be solvent by his neighbours and by persons dealing with him, is relevant, as showing that A made the representation in good faith.

(*g*) A is sued by B for the price of work done by B, upon a house of which A is owner, by the order of C, a contractor.

A's defence is that B's contract was with C.

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[1] Subs. by the Indian Evidence Act (1872) Amendment Act, 1891 (3 of 1891), s. 1 (*1*), for the original *Explanation*.

[2] *See* the Code of Criminal Procedure, 1898 (5 of 1898), s. 311.

[3] Subs. by Act 3 of 1891, s. 1 (2), for the original *illustration* (*b*).

The fact that A paid C for the work in question is relevant, as proving that A did, in good faith, make over to C the management of the work in question, so that C was in a position to contract with B on C's own account, and not as agent for A.

(*h*) A is accused of the dishonest misappropriation of property which he had found, and the question is whether, when he appropriated it, he believed in good faith that the real owner could not be found.

The fact that public notice of the loss of the property had been given in the place where A was, is relevant, as showing that A did not in good faith believe that the real owner of the property could not be found.

The fact that A knew, or had reason to believe, that the notice was given fraudulently by C, who had heard of the loss of the property and wished to set up a false claim to it, is relevant as showing that the fact that A knew of the notice did not disprove A's good faith.

(*i*) A is charged with shooting at B with intent to kill him. In order to show A's intent the fact of A's having previously shot at B may be proved.

(*j*) A is charged with sending threatening letters to B. Threatening letters previously sent by A to B may be proved, as showing the intention of the letters.

(*k*) The question is, whether A has been guilty of cruelty towards B, his wife.

Expressions of their feeling towards each other shortly before or after the alleged cruelty are relevant facts.

(*l*) The question is whether A's death was caused by poison.

Statements made by A during his illness as to his symptoms are relevant facts.

(*m*) The question is, what was the state of A's health at the time an assurance on his life was effected.

Statements made by A as to the state of his health at or near the time in question are relevant facts.

(*n*) A sues B for negligence in providing him with a carriage for hire not reasonably fit for use, whereby A was injured.

The fact that B's attention was drawn on other occasions to the defect of that particular carriage is relevant.

The fact that B was habitually negligent about the carriages which he let to hire is irrelevant.

(*o*) A is tried for the murder of B by intentionally shooting him dead.

The fact that A on other occasions shot at B is relevant as showing his intention to shoot B.

The fact that A was in the habit of shooting at people with intent to murder them is irrelevant.

(*p*) A is tried for a crime.

The fact that he said something indicating an intention to commit that particular crime is relevant.

The fact that he said something indicating a general disposition to commit crimes of that class is irrelevant.

Facts bearing on question whether act was accidental or intentional.

15. When there is a question whether an act was accidental or intentional, [1][or done with a particular knowledge or intention], the fact that such act formed part of a series of similar occurrences, in each of which the person doing the act was concerned, is relevant.

Illustrations.

(*a*) A is accused of burning down his house in order to obtain money for which it is insured.

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[1] Ins. by the Indian Evidence Act (1872) Amendment Act, 1891 (3 of 1891), s. 2.

The facts that A lived in several houses successively each of which he insured, in each of which a fire occurred, and after each of which fires A received payment from a different insurance office, are relevant, as tending to show that the fires were not accidental.

(*b*) A is employed to receive money from the debtors of B. It is A's duty to make entries in a book showing the amounts received by him. He makes an entry showing that on a particular occasion he received less than he really did receive.

The question is, whether this false entry was accidental or intentional.

The facts that other entries made by A in the same book are false, and that the false entry is in each case in favour of A, are relevant.

(*a*) A is accused of fraudulently delivering to B a counterfeit rupee.

The question is, whether the delivery of the rupee was accidental.

The facts that, soon before or soon after the delivery to B, A delivered counterfeit rupees to C, D and E are relevant, as showing that the delivery to B was not accidental.

Existence of course of business when relevant.

16. When there is a question whether a particular act was done, the existence of any course of business, according to which it naturally would have been done, is a relevant fact.

Illustrations.

(*a*) The question is, whether a particular letter was despatched.

The facts that it was the ordinary course of business for all letters put in a certain place to be carried to the post, and that that particular letter was put in that place are relevant.

(*b*) The question is, whether a particular letter reached A. The facts that it was posted in due course, and was not returned through the Dead Letter Office, are relevant.

ADMISSIONS.

Admission defined.

17. An admission is a statement, oral or documentary, which suggests any inference as to any fact in issue or relevant fact, and which is made by any of the persons, and under the circumstances, hereinafter mentioned.

Admission by party to proceeding or his agent;

18. Statements made by a party to the proceeding, or by any agent to any such party, whom the Court regards, under the circumstances of the case, as expressly or impliedly authorized by him to make them, are admissions.

by suitor in representative character;

Statements made by parties to suits suing or sued in a representative character, are not admissions, unless they were made while the party making them held that character.

Statements made by—

by party interested in subject-matter;

(1) persons who have any proprietary or pecuniary interest in the subject-matter of the proceeding, and who make the statement in their character of persons so interested, or

by person from whom interest derived.

(2) Persons from whom the parties to the suit have derived their interest in the subject-matter of the suit,

are admissions, if they are made during the continuance of the interest of the persons making the statements.

Admissions by persons whose position must be proved as against party to suit.

19. Statements made by persons whose position or liability it is necessary to prove as against any party to the suit, are admissions, if such statements would be relevant as against such persons in relation to such position or liability in a suit brought by or against them, and if they are made whilst the person making them occupies such position or is subject to such liability.

Illustrations.

A undertakes to collect rents for B.

B sues A for not collecting rent due from C to B.

A denies that rent was due from C to B.

A statement by C that he owed B rent is an admission, and is a relevant fact as against A, if A denies that C did owe rent to B.

Admissions by persons expressly referred to by party to suit.

20. Statements made by persons to whom a party to the suit has expressly referred for information in reference to a matter in dispute are admissions.

Illustration.

The question is whether a horse sold by A to B is sound.

A says to B—"Go and ask C; C knows all about it." C's statement is an admission.

Proof of admissions against persons making them, and by or on their behalf.

21. Admissions are relevant and may be proved as against the person who makes them, or his representative in interest; but they cannot be proved by or on behalf of the person who makes them or by his representative in interest, except in the following cases:—

(*1*) An admission may be proved by or on behalf of the person making it, when it is of such a nature that, if the person making it were dead, it would be relevant as between third persons under section 32.

(*2*) An admission may be proved by or on behalf of the person making it, when it consists of a statement of the existence of any state of mind or body, relevant or in issue, made at or about the time when such state of mind or body existed, and is accompanied by conduct rendering its falsehood improbable.

(*3*) An admission may be proved by or on behalf of the person making it, if it is relevant otherwise than as an admission

Illustrations.

(*a*) The question between A and B is, whether a certain deed is or is not forged. A affirms that it is genuine, B that it is forged.

A may prove a statement by B that the deed is genuine, and B may prove a statement by A that the deed is forged; but A cannot prove a statement by himself that the deed is genuine, nor can B prove a statement by himself that the deed is forged.

(*b*) A, the captain of a ship, is tried for casting her away.

Evidence is given to show that the ship was taken out of her proper course.

A produces a book kept by him in the ordinary course of his business showing observations alleged to have been taken by him from day to day, and indicating that the ship was not taken out of her proper course. A may prove these statements, because they would be admissible between third parties, if he were dead, under section 32, clause (2).

(*c*) A is accused of a crime committed by him at Calcutta.

He produces a letter written by himself and dated at Lahore on that day, and bearing the Lahore post-mark of that day.

The statement in the date of the letter is admissible, because, if A were dead, it would be admissible under section 32, clause (2).

(*d*) A is accused of receiving stolen goods knowing them to be stolen.

He offers to prove that he refused to sell them below their value.

A may prove these statements, though they are admissions, because they are explanatory of conduct influenced by facts in issue.

(*e*) A is accused of fraudulently having in his possession counterfeit coin which he knew to be counterfeit.

He offers to prove that he asked a skilful person to examine the coin as he doubted whether it was counterfeit or not, and that that person did examine it and told him it was genuine.

A may prove these facts for the reasons stated in the last preceding *illustration*.

When oral admissions as to contents of documents are relevant.

22. Oral admissions as to the contents of a document are not relevant, unless and until the party proposing to prove them shows that he is entitled to give secondary evidence of the contents of such document under the rules hereinafter contained, or unless the genuineness of a document produced is in question.

Admissions in civil cases when relevant.

23. In civil cases no admission is relevant, if it is made either upon an express condition that evidence of it is not to be given, or under circumstances from which the Court can infer that the parties agreed together that evidence of it should not be given.

Explanation.—Nothing in this section shall be taken to exempt any barrister, pleader, attorney or vakil from giving evidence of any matter of which he may be compelled to give evidence under section 126.

Confession caused by inducement, threat or promise, when irrelevant in criminal proceeding.

24. A confession made by an accused person is irrelevant in a criminal proceeding, if the making of the confession appears to the Court to have been caused by any inducement, threat or promise[1] having reference to the charge against the accused person, proceeding from a person in authority and sufficient, in the opinion of the Court, to give the accused person grounds which would appear to him reasonable for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him.

[1] For prohibition of such inducements, etc., *see* the Code of Criminal Procedure, 1898 (Act 5 of 1898), s. 343.

49084

(*Chapter II.—Of the Relevancy of Facts.*)

Confession to police-officer not to be proved.

25. No confession made to a police-officer[1] shall be proved as against a person accused of any offence.

Confession by accused while in custody of police not to be proved against him.

26. No confession made by any person whilst he is in the custody of a police-officer, unless it be made in the immediate presence of a Magistrate,[2] shall be proved as against such person.

[3][*Explanation.*—In this section "Magistrate" does not include the head of a village discharging magisterial functions in the Presidency of Fort St. George[4]* * * * or elsewhere, unless such headman is a Magistrate exercising the powers of a Magistrate under the Code of Criminal Procedure, 1882.[5]] X of 1882

How much of information received from accused may be proved.

27. Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved.

Confession made, after removal of impression caused by inducement, threat or promise, relevant.

28. If such a confession as is referred to in section 24 is made after the impression caused by any such inducement, threat or promise has, in the opinion of the Court, been fully removed, it is relevant.

Confession otherwise relevant not to become irrelevant because of promise of secrecy, etc.

29. If such a confession is otherwise relevant, it does not become irrelevant merely because it was made under a promise of secrecy, or in consequence of a deception practised on the accused person for the purpose of obtaining it, or when he was drunk, or because it was made in answer to questions which he need not have answered, whatever may have been the form of those questions, or because he was not warned that he was not bound to make such confession, and that evidence of it might be given against him.

Consideration of proved confession affecting person making it and others jointly under trial for same offence.

30. When more persons than one are being tried jointly for the same offence, and a confession made by one of such persons affecting himself and some other of such persons is proved, the Court may take into consideration such confession as against such other person as well as against the person who makes such confession.

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[1] As to statements made to a police-officer investigating a case, *see* the Code of Criminal Procedure, 1898 (Act 5 of 1898), s. 162.

[2] A Coroner has been declared to be a Magistrate for the purposes of this section, *see* the Coroners Act, 1871 (4 of 1871), s. 20.

[3] Ins. by the Indian Evidence Act (1872) Amendment Act, 1891 (3 of 1891), s. 3.

[4] The words "or in Burma" rep. by the A. O. 1937.

[5] *See* now the Code of Criminal Procedure, 1898 (Act 5 of 1898).

[1][*Explanation.*—"Offence," as used in this section, includes the abetment of, or attempt to commit, the offence.[2]]

Illustrations.

(*a*) A and B are jointly tried for the murder of C. It is proved that A said—"B and I murdered C." The Court may consider the effect of this confession as against B.

(*b*) A is on his trial for the murder of C. There is evidence to show that C was murdered by A and B, and that B said—"A and I murdered C."

This statement may not be taken into consideration by the Court against A, as B is not being jointly tried.

31. Admissions are not conclusive proof of the matters admitted but they may operate as estoppels under the provisions hereinafter contained.

Admissions not conclusive proof, but may estop.

STATEMENTS BY PERSONS WHO CANNOT BE CALLED AS WITNESSES.

32. Statements, written or verbal, of relevant facts made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be procured without an amount of delay or expense which under the circumstances of the case appears to the Court unreasonable, are themselves relevant facts in the following cases:—

Cases in which statement of relevant fact by person who is dead or cannot be found, etc. is relevant.

(*1*) When the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question.

When it relates to cause of death;

Such statements are relevant whether the person who made them was or was not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question.

(*2*) When the statement was made by such person in the ordinary course of business, and in particular when it consists or any entry or memorandum made by him in books kept in the ordinary course of business, or in the discharge of professional duty; or of an acknowledgment written or signed by him of the receipt of money, goods, securities or property of any kind; or of a document used in commerce written or signed by him; or of the date of a letter or other document usually dated, written or signed by him.

or is made in course of business;

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[1] Ins. by the Indian Evidence Act (1872) Amendment Act, 1891 (3 of 1891), s. 4.

[2] *Cf.* the Indian Penal Code (Act 45 of 1860), *Explanation* 4 to s. 108.

or against interest of maker;

(*3*) When the statement is against the pecuniary or proprietary interest of the person making it, or when, if true, it would expose him or would have exposed him to a criminal prosecution or to a suit for damages.

or gives opinion as to public right or custom, or matters of general interest;

(*4*) When the statement gives the opinion of any such person, as to the existence of any public right or custom or matter of public or general interest, of the existence of which, if it existed, he would have been likely to be aware, and when such statement was made before any controversy as to such right, custom or matter has arisen.

or relates to existence of relationship;

(*5*) When the statement relates to the existence of any relationship [1][by blood, marriage or adoption] between persons as to whose relationship [1][by blood, marriage or adoption] the person making the statement had special means of knowledge, and when the statement was made before the question in dispute was raised.

or is made in will or deed relating to family affairs;

(*6*) When the statement relates to the existence of any relationship [1][by blood, marriage or adoption] between persons deceased, and is made in any will or deed relating to the affairs of the family to which any such deceased person belonged, or in any family pedigree, or upon any tombstone, family portrait or other thing on which such statements are usually made, and when such statement was made before the question in dispute was raised.

or in document relating to transaction mentioned in section 13, clause (*a*);

(*7*) When the statement is contained in any deed, will or other document which relates to any such transaction as is mentioned in section 13, clause (*a*).

or is made by several persons and expresses feelings relevant to matter in question.

(*8*) When the statement was made by a number of persons, and expressed feelings or impressions on their part relevant to the matter in question.

Illustrations.

(*a*) The question is, whether A was murdered by B; or

A dies of injuries received in a transaction in the course of which she was ravished. The question is whether she was ravished by B; or

The question is whether A was killed by B under such circumstances that a suit would lie against B by A's widow.

Statements made by A as to the cause of his or her death, referring respectively to the murder, the rape and the actionable wrong under consideration are relevant facts.

(*b*) The question is as to the date of A's birth.

An entry in the diary of a deceased surgeon regularly kept in the course of business, stating that, on a given day he attended A's mother and delivered her of a son, is a relevant fact.

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[1] Ins. by the Indian Evidence Act Amendment Act (18 of 1872), s. 2.

(*c*) The question is, whether A was in Calcutta on a given day.

A statement in the diary of a deceased solicitor, regularly kept in the course of business, that on a given day the solicitor attended A at a place mentioned, in Calcutta, for the purpose of conferring with him upon specified business, is a relevant fact.

(*d*) The question is, whether a ship sailed from Bombay harbour on a given day.

A letter written by a deceased member of a merchant's firm by which she was chartered to their correspondents in London, to whom the cargo was consigned, stating that the ship sailed on a given day from Bombay harbour, is a relevant fact.

(*e*) The question is, whether rent was paid to A for certain land.

A letter from A's deceased agent to A saying that he had received the rent on A's account and held it at A's orders, is a relevant fact.

(*f*) The question is, whether A and B were legally married.

The statement of a deceased clergyman that he married them under such circumstances that the celebration would be a crime, is relevant.

(*g*) The question is, whether A, a person who cannot be found, wrote a letter on a certain day. The fact that a letter written by him is dated on that day is relevant.

(*h*) The question is, what was the cause of the wreck of a ship.

A protest made by the Captain, whose attendance cannot be procured, is a relevant fact.

(*i*) The question is, whether a given road is a public way.

A statement by A, a deceased headman of the village, that the road was public, is a relevant fact.

(*j*) The question is, what was the price of grain on a certain day in a particular market. A statement of the price, made by a deceased banya in the ordinary course of his business, is a relevant fact.

(*k*) The question is, whether A, who is dead, was the father of B.

A statement by A that B was his son, is a relevant fact.

(*l*) The question is, what was the date of the birth of A.

A letter from A's deceased father to a friend, announcing the birth of A on a given day, is a relevant fact.

(*m*) The question is, whether, and when, A and B were married.

An entry in a memorandum-book by C, the deceased father of B, of his daughter's marriage with A on a given date, is a relevant fact.

(*n*) A sues B for a libel expressed in a painted caricature exposed in a shop window. The question is as to the similarity of the caricature and its libellous character. The remarks of a crowd of spectators on these points may be proved.

Relevancy of certain evidence for proving, in subsequent proceeding, the truth of facts therein stated.

33. Evidence given by a witness in a judicial proceeding, or before any person authorized by law to take it, is relevant for the purpose of proving, in a subsequent judicial proceeding, or in a later stage of the same judicial proceeding, the truth of the facts which it states, when the witness is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or if his presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the Court considers unreasonable:

Provided—

that the proceeding was between the same parties or their representatives in interest;

that the adverse party in the first proceeding had the right and opportunity to cross-examine;

that the questions in issue were substantially the same in the first as in the second proceeding.

Explanation.—A criminal trial or inquiry shall be deemed to be a proceeding between the prosecutor and the accused within the meaning of this section.

STATEMENTS MADE UNDER SPECIAL CIRCUMSTANCES.

Entries in books of account when relevant.

34. [1]Entries in books of account, regularly kept in the course of business, are relevant whenever they refer to a matter into which the Court has to inquire, but such statements shall not alone be sufficient evidence to charge any person with liability.

Illustration.

A sues B for Rs. 1,000, and shows entries in his account books showing B to be indebted to him to this amount. The entries are relevant, but are not sufficient, without other evidence, to prove the debt.

Relevancy of entry in public record made in performance of duty.

35. An entry in any public or other official book, register or record, stating a fact in issue or relevant fact, and made by a public servant in the discharge of his official duty, or by any other person in performance of a duty specially enjoined by the law of the country in which such book, register or record is kept, is itself a relevant fact.

Relevancy of statements in maps, charts and plans.

36. Statements of facts in issue or relevant facts, made in published maps or charts generally offered for public sale, or in maps or plans made under the authority of [2][the Central Government or any [3][State] Government], as to matters usually represented or stated in such maps, charts or plans, are themselves relevant facts.

Relevancy of statement as to fact of public nature

37. When the Court has to form an opinion as to the existence of any fact of a public nature, any statement of it, made in a recital contained in any Act of Parliament [4][of the United Kingdom] or in any

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[1] *Cf.* the Indian Companies Act, 1913 (7 of 1913), s. 240 and the Code of Civil Procedure, 1908 (Act 5 of 1908), Sch. I, Order VII, Rule 17. As to admissibility in evidence of certified copies of entries in Bankers' books, *see* the Bankers' Books, Evidence Act, 1891 (18 of 1891), s. 4.

[2] Subs. by the A. O. 1948 for "any Govt. in British India" which had been subs. by the A. O. 1937 for "Govt."

[3] Subs. by the A. O. 1950 for "Provincial".

[4] Ins. by the A. O. 1950.

(*Chapter II.—Of the Relevancy of Facts.*)

[1] [Central Act, Provincial Act or ~~an Act of the Legislature of a Part A State or a Part C State~~ or in a Government notification or notification by the Crown Representative appearing in the Official Gazette or in any printed paper purporting to be the London Gazette or the Government Gazette of any Dominion, colony or possession of his Majesty is a relevant fact.]

contained in certain Acts or notifications.

2* * * *

38. When the Court has to form an opinion as to a law of any country, any statement of such law contained in a book purporting to be printed or published under the authority of the Government of such country and to contain any such law, and any report of a ruling of the Courts of such country contained in a book purporting to be a report of such rulings, is relevant.

Relevancy of statements as to any law contained in law-books.

HOW MUCH OF A STATEMENT IS TO BE PROVED.

39. When any statement of which evidence is given forms part of a longer statement, or of a conversation or part of an isolated document, or is contained in a document which forms part of a book, or of a connected series of letters or papers, evidence shall be given of so much and no more of the statement, conversation, document, book or series of letters or papers as the Court considers necessary in that particular case to the full understanding of the nature and effect of the statement, and of the circumstances under which it was made.

What evidence to be given when statement forms part of a conversation, document, book or series of letters or papers.

JUDGMENTS OF COURTS OF JUSTICE WHEN RELEVANT.

40. The existence of any judgment, order or decree which by law prevents any Court from taking cognizance of a suit or holding a trial, is a relevant fact when the question is whether such Court ought to take cognizance of such suit or to hold such trial.

Previous judgments relevant to bar a second suit or trial.

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[1] The original words were "Act of the Governor General of India in Council or of the Governors in Council of Madras or Bombay, or of the Lieutenant-Governor in Council of Bengal, or in a notification of the Govt. appearing in the Gazette of India, or in the Gazette of any L. G., or in any printed paper purporting to be the London Gazette or the Govt. Gazette of any colony or possession of the Queen, is a relevant fact". This was amended first by the Repealing and Amending Act 1914 (10 of 1914) and then by the A. O. 1937, the A. O. 1948 and A. O. 1950 to read as above.

[2] The last paragraph was rep. by the Repealing and Amending Act, 1914 (10 of 1914).

(*Chapter II—Of the Relevancy of Facts.*)

Relevancy of certain judgments in probate, etc. jurisdiction.

41. A final judgment, order or decree of a competent Court, in the exercise of probate, matrimonial, admiralty or insolvency jurisdiction, which confers upon or takes away from any person any legal character, or which declares any person to be entitled to any such character, or to be entitled to any specific thing, not as against any specified person but absolutely, is relevant when the existence of any such legal character, or the title of any such person to any such thing, is relevant.

Such judgment, order or decree is conclusive proof—

that any legal character which it confers accrued at the time when such judgment, order or decree came into operation;

that any legal character, to which it declares any such person to be entitled, accrued to that person at the time when such judgment [1][order or decree] declares it to have accrued to that person;

that any legal character which it takes away from any such person ceased at the time from which such judgment, [1][order or decree] declared that it had ceased or should cease;

and that anything to which it declares any person to be so entitled was the property of that person at the time from which such judgment, [1][order or decree] declares that it had been or should be his property.

Relevancy and effect of judgments, orders or decrees, other than those mentioned in section 41.

42. Judgments, orders or decrees other than those mentioned in section 41 are relevant if they relate to matters of a public nature relevant to the enquiry; but such judgments, orders or decrees are not conclusive proof of that which they state.

Illustration.

A sues B for trespass on his land. B alleges the existence of a public right of way over the land, which A denies.

The existence of a decree in favour of the defendant, in a suit by A against C for a trespass on the same land, in which C alleged the existence of the same right of way, is relevant, but it is not conclusive proof that the right of way exists.

Judgments, etc., other than those mentioned in sections 40 to 42, when relevant.

43. Judgments, orders or decrees, other than those mentioned in sections 40, 41 and 42, are irrelevant, unless the existence of such judgment, order or decree is a fact in issue, or is relevant under some other provision of this Act.

Illustrations.

(*a*) A and B separately sue C for a libel which reflects upon each of them. C in each case says that the matter alleged to be libellous is true, and the circumstances are such that it is probably true in each case, or in neither.

A obtains a decree against C for damages on the ground that C failed to make out his justification. The fact is irrelevant as between B and C.

(*b*) A prosecutes B for adultery with C, A's wife.

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[1] Ins. by the Indian Evidence Act Amendment Act (18 of 1872), s. 3.

B denies that C is A's wife, but the Court convicts B of adultery.

Afterwards, C is prosecuted for bigamy in marrying B during A's lifetime. C says that she never was A's wife.

The judgment against B is irrelevant as against C.

(*c*) A prosecutes B for stealing a cow from him. B is convicted.

A afterwards sues C for the cow, which B had sold to him before his conviction. As between A and C, the judgment against B. is irrelevant.

(*d*) A has obtained a decree for the possession of land against B. C, B's son, murders A in consequence.

The existence of the judgment is relevant, as showing motive for a crime.

[1][(*e*) A is charged with theft and with having been previously convicted of theft. The previous conviction is relevant as a fact in issue.

(*f*) A is tried for the murder of B. The fact that B prosecuted A for libel and that A was convicted and sentenced is relevant under section 8 as showing the motive for the fact in issue].

Fraud or collusion in obtaining judgment, or incompetency of Court, may be proved.

44. Any party to a suit or other proceeding may show that any judgment, order or decree which is relevant under section 40, 41 or 42, and which has been proved by the adverse party, was delivered by a Court not competent to deliver it, or was obtained by fraud or collusion.

OPINIONS OF THIRD PERSONS WHEN RELEVANT.

Opinions of experts.

45. When the Court has to form an opinion upon a point of foreign law, or of science, or art, or as to identity of handwriting [2][or finger impressions], the opinions upon that point of persons specially skilled in such foreign law, science or art, [3][or in questions as to identity of handwriting] [2][or finger impressions] are relevant facts.

Such persons are called experts.

Illustrations.

(*a*) The question is, whether the death of A was caused by poison.

The opinion of experts as to the symptoms produced by the poison by which A is supposed to have died, are relevant.

(*b*) The question is, whether A, at the time of doing a certain act, was, by reason of unsoundness of mind, incapable of knowing the nature of the act, or that he was doing what was either wrong or contrary to law.

The opinions of experts upon the question whether the symptoms exhibited by A commonly show unsoundness of mind, and whether such unsoundness of mind usually renders persons incapable of knowing the nature of the acts which they do, or of knowing that what they do is either wrong or contrary to law, are relevant.

(*c*) The question is, whether a certain document was written by A. Another document is produced which is proved or admitted to have been written by A.

The opinions of experts on the question whether the two documents were written by the same person or by different persons, are relevant.

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[1] Ins. by the Indian Evidence Act (1872) Amendment Act, 1891 (3 of 1891), s. 5.

[2] Ins. by the Indian Evidence Act, 1899 (5 of 1899), s. 3. For discussion in Council as to whether "finger impressions" include "thumb impressions," *see* Gazette of India, 1898, Pt. VI, p 24

[3] Ins. by the Indian Evidence Act Amendment Act (18 of 1872), s. 4.

(*Chapter II.—Of the Relevancy of Facts.*)

Facts bearing upon opinions of experts.

46. Facts, not otherwise relevant, are relevant if they support or are inconsistent with the opinions of experts, when such opinions are relevant.

Illustrations.

(*a*) The question is, whether A was poisoned by a certain poison.

The fact that other persons, who were poisoned by that poison, exhibited certain symptoms which experts affirm or deny to be the symptoms of that poison, is relevant.

(*b*) The question is, whether an obstruction to a harbour is caused by a certain sea-wall.

The fact that other harbours similarly situated in other respects, but where there were no such sea-walls, began to be obstructed at about the same time, is relevant.

Opinion as to handwriting when relevant.

47. When the Court has to form an opinion as to the person by whom any document was written or signed, the opinion of any person acquainted with the handwriting of the person by whom it is supposed to be written or signed that it was or was not written or signed by that person, is a relevant fact.

Explanation.—A person is said to be acquainted with the handwriting of another person when he has seen that person write, or when he has received documents purporting to be written by that person in answer to documents written by himself or under his authority and addressed to that person, or when, in the ordinary course of business, documents purporting to be written by that person have been habitually submitted to him.

Illustration.

The question is, whether a given letter is in the handwriting of A, a merchant in London.

B is a merchant in Calcutta, who has written letters addressed to A and received letters purporting to be written by him. C. is B's clerk, whose duly it was to examine and file B's correspondence. D is B's broker, to whom B habitually submitted the letters purporting to be written by A for the purpose of advising with him thereon.

The opinions of B, C and D on the question whether the letter is in the handwriting of A are relevant, though neither B, C or D ever saw A write.

Opinion as to existence of right or custom, when relevant.

48. When the Court has to form an opinion as to the existence of any general custom or right, the opinions, as to the existence of such custom or right, of persons who would be likely to know of its existence if it existed, are relevant.

Explanation.—The expression "general custom or right" includes customs or rights common to any considerable class of persons.

Illustration.

The right of the villagers of a particular village to use the water of a particular well is a general right within the meaning of this section.

(*Chapter II.—Of the Relevancy of Facts.*)

49. When the Court has to form an opinion as to—

Opinion as to usages, tenets, etc., when relevant.

the usages and tenets of any body of men or family,

the constitution and government of any religious or charitable foundation or

the meaning of words or terms used in particular districts or by particular classes of people,

the opinions of persons having special means of knowledge thereon, are relevant facts.

50. When the Court has to form an opinion as to the relationship of one person to another, the opinion, expressed by conduct, as to the existence of such relationship, of any person who, as a member of the family or otherwise, has special means of knowledge on the subject, is a relevant fact:

Opinion on relationship, when relevant.

Provided that such opinion shall not be sufficient to prove a marriage in proceedings under the Indian Divorce Act, or in prosecutions under section 494, 495, 497, or 498 of the Indian Penal Code.

IV of 1869. XLV of 1860.

Illustrations.

(*a*) The question is, whether A and B. were married.

The fact that they were usually received and treated by their friends as husband and wife, is relevant.

(*b*) The question is, whether A was the legitimate son of B. The fact that A was always treated as such by members of the family, is relevant.

51. Whenever the opinion of any living person is relevant, the grounds on which such opinion is based are also relevant.

Grounds of opinion, when relevant.

Illustration.

An expert may give an account of experiments performed by him for the purpose of forming his opinion.

CHARACTER WHEN RELEVANT.

52. In civil cases the fact that the character of any person concerned is such as to render probable or improbable any conduct imputed to him is irrelevant, except in so far as such character appears from facts otherwise relevant.

In civil cases character to prove conduct imputed, irrelevant.

53. In criminal proceedings the fact that the person accused is of a good character is relevant.

In criminal cases previous good character relevant.

(*Chapter II.—Of the Relevancy of Facts. Chapter III.—Facts which need not be proved.*)

Previous bad character not relevant, except in reply.

[1][**54.** In criminal proceedings the fact that the accused person has a bad character is irrelevant, unless evidence has been given that he has a good character, in which case it becomes relevant.

Explanation 1.—This section does not apply to cases in which the bad character of any person is itself a fact in issue.

Explanation 2.—A previous conviction is relevant as evidence of bad character.]

Character as affecting damages.

55. In civil cases the fact that the character of any person is such as to affect the amount of damages which he ought to receive, is relevant.

Explanation.—In sections 52, 53, 54 and 55, the word "character" includes both reputation and disposition; but, [2][except as provided in section 54], evidence may be given only of general reputation and general disposition, and not of particular acts by which reputation or disposition were shown.

PART II.

ON PROOF.

CHAPTER III.

FACTS WHICH NEED NOT BE PROVED.

Fact judicially noticeable need not be proved.

56. No fact of which the Court will take judicial notice need be proved.

Facts of which Court must take judicial notice.

57. The Court shall take judicial notice of the following facts:—

[3][(*1*) All laws in force in the territory of India:]

(*2*) All public Acts passed or hereafter to be passed by Parliament [4][of the United Kingdom], and all local and personal Acts directed by Parliament [4][of the United Kingdom] to be judicially noticed:

(*3*) Articles of War for [5][the Indian] Army [6][Navy or Air Force]:

[7][(*4*) The course of proceeding of Parliament of the United Kingdom, of the Constituent Assembly of India, of Parliament and of the legislatures established under any laws for the time being in force in a Province or in the States:]

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[1] Subs. by the Indian Evidence Act (1872) Amendment Act, 1891 (3 of 1891), s. 6, for the original section.

[2] Ins. by s. 7, *ibid.*

[3] Subs. by the A. O. 1950 for the para. which had been subs. by the A. O. 1937 for the original para.

[4] Ins. by the A. O. 1950.

[5] Subs. by the A. O. 1950 for "Her Majesty's".

[6] Subs. by the Repealing and Amending Act, 1927 (10 of 1927), s. 2 and Sch. I for "or Navy".

[7] Subs. by the A. O. 1950 for the original para. (4) as amended by the A. O. 1937 and A. O. 1948.

(*Chapter III.—Facts which need not be proved.*)

(*5*) The accession and the sign manual of the Sovereign for the time being of the United Kingdom of Great Britain and Ireland:

(*6*) All seals of which English Courts take judicial notice: the seals of all the [1][Courts in ~~the~~ [2]~~[States]~~] and of all Courts out of ~~[the States]~~ established by the authority of [4][the Central Government or the Crown representative]: the seals of Courts of Admiralty and Maritime Jurisdiction and of Notaries Public, and all seals which any person is authorized to use by [5][the Constitution or an Act of Parliament of the United Kingdom or an] Act or Regulation having the force of law in ~~[the States]~~:

(*7*) The accession to office, names, titles, functions and signatures of the persons filling for the time being any public office in any [6][State], if the fact of their appointment to such office is notified in [7][any Official Gazette]:

(*8*) The existence, title and national flag of every State or Sovereign recognized by [8][the Government of India][9]:

(*9*) The divisions of time, the geographical divisions of the world, and public festivals, fasts and holidays notified in the Official Gazette:

(*10*) The territories under the dominion of [8][the Government of India][9]:

(*11*) The commencement, continuance and termination of hostilities between [8][the Government of India][9] and any other State or body of persons:

(*12*) The names of the members and officers of the Court and of their deputies and subordinate officers and assistants, and also of all officers acting in execution of its process, and of all advocates, attorneys, proctors, vakils, pleaders and other persons authorized by law to appear or act before it:

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[1] Subs. by the A. O. 1948 for "Courts of British India."

[2] Subs. by the A. O. 1950 for "Provinces of India."

[3] Subs. by the A. O. 1950 for the "the Provinces" which had been subs. by the A. O 1948 for "British India."

[4] Subs. by the A. O. 1937 for "the G. G. or any L. G. in Council."

[5] Subs. by the A. O. 1950 for "any Act of Parliament or other".

[6] Subs. by the A. O. 1950 for "Province" which had been subs. by the A. O. 1948 for "part of British India."

[7] Subs. by the A. O. 1937 for "the Gazette of India or in the official Gazette of any L. G."

[8] Subs. by the A. O. 1950 for "The British Crown".

[9] *See* also the Code of Civil Procedure, 1908 (5 of 1908), s. 84 (2), under which every court is required to take judicial notice of the fact that a foreign State has, or has not, been recognized by His Majesty or the Central Government.

(*Chapter III.—Facts which need not be proved. Chapter IV.—Of Oral Evidence.*)

(*13*) The rule of the road [1][on land or at sea].

In all these cases and also on all matters of public history, literature, science or art, the Court may resort for its aid to appropriate books or documents of reference.

If the Court is called upon by any person to take judicial notice of any fact, it may refuse to do so unless and until such person produces any such book or document as it may consider necessary to enable it to do so.

Facts admitted need not be proved.

58. No fact need be proved in any proceeding which the parties thereto or their agents agree to admit at the hearing, or which, before the hearing, they agree to admit by any writing under their hands, or which by any rule or pleading in force at the time they are deemed to have admitted by their pleadings:

Provided that the Court may, in its discretion, require the facts admitted to be proved otherwise than by such admissions.

CHAPTER IV.

Of Oral Evidence.

Proof of facts by oral evidence.

59. All facts, except the contents of documents, may be proved by oral evidence.

Oral evidence must be direct.

60. Oral evidence must, in all cases whatever, be direct; that is to say—

if it refers to a fact which could be seen, it must be the evidence of a witness who says he saw it;

if it refers to a fact which could be heard, it must be the evidence of a witness who says he heard it:

if it refers to a fact which could be perceived by any other sense or in any other manner, it must be the evidence of a witness who says he perceived it by that sense or in that manner;

if it refers to an opinion or to the grounds on which that opinion is held, it must be the evidence of the person who holds that opinion on those grounds:

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[1] Ins. by the Indian Evidence Act Amendment Act (18 of 1872), s. 5.

(*Chapter IV.—Of Oral Evidence. Chapter V.—Of Documentary Evidence.*)

Provided that the opinions of experts expressed in any treatise commonly offered for sale, and the grounds on which such opinions are held, may be proved by the production of such treatises if the author is dead or cannot be found, or has become incapable of giving evidence, or cannot be called as a witness without an amount of delay or expense which the Court regards as unreasonable:

Provided also that, if oral evidence refers to the existence or condition of any material thing other than a document, the Court may, if it thinks fit, require the production of such material thing for its inspection.

CHAPTER V.

OF DOCUMENTARY EVIDENCE.

61. The contents of documents may be proved either by primary or by secondary evidence. Proof of contents of documents.

62. Primary evidence means the document itself produced for the inspection of the Court. Primary evidence.

Explanation 1.—Where a document is executed in several parts, each part is primary evidence of the document.

Where a document is executed in counterpart, each counterpart being executed by one or some of the parties only, each counterpart is primary evidence as against the parties executing it.

Explanation 2.—Where a number of documents are all made by one uniform process, as in the case of printing, lithography or photography, each is primary evidence of the contents of the rest; but, where they are all copies of a common original, they are not primary evidence of the contents of the original.

Illustration.

A person is shown to have been in possession of a number of placards, all printed at one time from one original. Any one of the placards is primary evidence of the contents of any other, but no one of them is primary evidence of the contents of the original.

63. Secondary evidence means and includes— Secondary evidence.

(*1*) certified copies given under the provisions hereinafter contained;[1]

(*2*) copies made from the original by mechanical processes which in themselves insure the accuracy of the copy, and copies compared with such copies;

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[1] *See* s. 76, *infra*.

(*3*) copies made from or compared with the original:

(*4*) counterparts of documents as against the parties who did not execute them:

(*5*) oral accounts of the contents of a document given by some person who has himself seen it.

Illustrations.

(*a*) A photograph of an original is secondary evidence of its contents, though the two have not been compared, if it is proved that the thing photographed was the original.

(*b*) A copy, compared with a copy of a letter made by a copying machine is secondary evidence of the contents of the letter, if it is shown that the copy made by the copying machine was made from the original.

(*c*) A copy transcribed from a copy, but afterwards compared with the original is secondary evidence; but the copy not so compared is not secondary evidence of the original, although the copy from which it was transcribed was compared with the original.

(*d*) Neither an oral account of a copy compared with the original, nor an oral account of a photograph or machine-copy of the original, is secondary evidence of the original.

Proof of documents by primary evidence.

64. Documents must be proved by primary evidence except in the cases hereinafter mentioned.

Cases in which secondary evidence relating to documents may be given.

65. Secondary evidence may be given of the existence, condition or contents of a document in the following cases:—

(*a*) when the original is shown or appears to be in the possession or power—

of the person against whom the document is sought to be proved, or of any person out of reach of, or not subject to, the process of the Court, or

of any person legally bound to produce it,

and when, after the notice mentioned in section 66, such person does not produce it;

(*b*) when the existence, condition or contents of the original have been proved to be admitted in writing by the person against whom it is proved or by his representative in interest;

(*c*) when the original has been destroyed or lost, or when the party offering evidence of its contents cannot, for any other reason not arising from his own default or neglect, produce it in reasonable time;

(*d*) when the original is of such a nature as not to be easily movable;

(*e*) when the original is a public document within the meaning of section 74;

(*f*) when the original is a document of which a certified copy is permitted by this Act, or by any other law in force in [1]~~[the States]~~ to be given in evidence;[2]

(*g*) when the originals consist of numerous accounts or other documents which cannot conveniently be examined in Court and the fact to be proved is the general result of the whole collection.

In cases (*a*), (*c*) and (*d*), any secondary evidence of the contents of the document is admissible.

In case (*b*), the written admission is admissible.

In case (*e*) or (*f*), a certified copy of the document, but no other kind of secondary evidence, is admissible.

In case (*g*), evidence may be given as to the general result of the documents by any person who has examined them, and who is skilled in the examination of such documents.

Rules as to notice to produce.

66. Secondary evidence of the contents of the documents referred to in section 65, clause (*a*), shall not be given unless the party proposing to give such secondary evidence has previously given to the party in whose possession or power the document is, [3][or to his attorney or pleader,] such notice to produce it as is prescribed by law; and if no notice is prescribed by law; then such notice as the Court considers reasonable under the circumstances of the case:

Provided that such notice shall not be required in order to render secondary evidence amissible in any of the following cases, or in any other case in which the Court thinks fit to dispense with it:—

(1) when the document to be proved is itself a notice;

(2) when, from the nature of the case, the adverse party must know that he will be required to produce it;

(3) when it appears or is proved that the adverse party has obtained possession of the original by fraud or force;

(4) when the adverse party or his agent has the original in Court;

(5) when the adverse party or his agent has admitted the loss of the document;

(6) when the person in possession of the document is out of reach of, or not subject to, the process of the Court.

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[1] Subs. by the A. O. 1950 for "the Provinces" which had been subs. by the A. O. 1948 for "British India."

[2] *Cf.* the Bankers' Books Evidence Act, 1891 (18 of 1891), s. 4.

[3] Ins. by the Indian Evidence Act Amendment Act (18 of 1872), s. 6.

(*Chapter V.—Of Documentary Evidence.*)

Proof of signature and handwriting of person alleged to have signed or written document produced.

67. If a document is alleged to be signed or to have been written wholly or in part by any person, the signature or the handwriting of so much of the document as is alleged to be in that person's handwriting must be proved to be in his handwriting.

Proof of execution of document required by law to be attested.

68. If a document is required by law to be attested, it shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the Court and capable of giving evidence:

[1][Provided that it shall not be necessary to call an attesting witness in proof of the execution of any document, not being a will, which has been registered in accordance with the provisions of the Indian Registration Act, 1908, unless its execution by the person by whom it purports to have been executed is specifically denied.] XVI of 1908

Proof where no attesting witness found.

69. If no such attesting witness can be found, or if the document purports to have been executed in the United Kingdom, it must be proved that the attestation of one attesting witness at least is in his handwriting, and that the signature of the person executing the document is in the handwriting of that person.

Admission of execution by party to attested document.

70. The admission of a party to an attested document of its execution by himself shall be sufficient proof of its execution as against him, though it be a document required by law to be attested.

Proof when attesting witness denies the execution.

71. If the attesting witness denies or does not recollect the execution of the document, its execution may be proved by other evidence.

Proof of document not required by law to be attested.

72. An attested document not required by law to be attested may be proved as if it was unattested.

Comparison of signature, writing or seal with others admitted or proved.

73. In order to ascertain whether a signature, writing or seal is that of the person by whom it purports to have been written or made, any signature, writing or seal admitted or proved to the satisfaction of the Court to have been written or made by that person may be compared with the one which is to be proved, although that signature, writing or seal has not been produced or proved for any other purpose.

[1] Ins. by the Indian Evidence (Amendment) Act, 1926 (31 of 1926), s. 2.

(Chapter V:—Of Documentary Evidence.)

The Court may direct any person present in Court to write any words or figures for the purpose of enabling the Court to compare the words or figures so written with any words or figures alleged to have been written by such person.

[1][This section applies also, with any necessary modifications, to finger-impressions.]

PUBLIC DOCUMENTS.

74. The following documents are public documents:— Public documents.

(1) documents forming the acts or records of the acts—

(i) of the sovereign authority,

(ii) of official bodies and tribunals, and

(iii) of public officers, legislative, judicial and executive, [2][of any part of India or of the Commonwealth], or of a foreign country;

(2) public records kept [3][in any State] of private documents.

75. All other documents are private. Private documents.

76. [4]Every public officer having the custody of a public document, which any person has a right to inspect, shall give that person on demand a copy of it on payment of the legal fees therefor, together with a certificate written at the foot of such copy that it is a true copy of such document or part thereof, as the case may be, and such certificate shall be dated and subscribed by such officer with his name and his official title, and shall be sealed, whenever such officer is authorized by law to make use of a seal, and such copies so certified shall be called certified copies. Certified copies of public documents.

Explanation.—Any officer who, by the ordinary course of official duty, is authorized to deliver such copies, shall be deemed to have the custody of such documents within the meaning of this section.

77. Such certified copies may be produced in proof of the contents of the public documents or parts of the public documents of which they purport to be copies. Proof of documents by production of certified copies.

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[1] Ins. by the Indian Evidence Act, 1899 (5 of 1899), s. 3.

[2] The original words "whether of British India, or of any other part of Her Majesty's dominions" have successively been amended by the A. O. 1948 and the A. O. 1950 to read as above.

[3] Subs. by the A. O. 1950 for "in any Province" which had been subs. by the A. O. 1948 for "in British India."

[4] A village-officer in the Punjab has been declared for the purposes of this Act to be a public officer having the custody of a public document—*see* the Punjab Land-revenue Act, 1887 (17 of 1887) s. 151 (2).

Proof of other official documents.

78. The following public documents may be proved as follows:—

(1) Acts, orders or notifications of [1][the Central Government] in any of its departments, [2][or of the Crown Representative] or of any [3][State Government] or any department of any [3][State Government]—

by the records of the departments, certified by the heads of those departments respectively,

or by any document purporting to be printed by order of any such Government [2][or, as the case may be, of the Crown Representative:]

(2) the proceedings of the Legislatures,—

by the journals of those bodies respectively, or by published Acts or abstracts, or by copies purporting to be printed [4][by order of the Government concerned:]

(3) proclamations, orders or regulations issued by Her Majesty or by the Privy Council, or by any department of Her Majesty's Government,—

by copies or extracts contained in the London Gazette, or purporting to be printed by the Queen's Printer:

(4) the Acts of the Executive or the proceedings of the Legislature of a foreign country,—by journals published by their authority, or commonly received in that country as such, or by a copy certified under the seal of the country or sovereign, or by a recognition thereof in some [5][Central Act]:

(5) the proceedings of a municipal body in [6][a State],

by a copy of such proceedings, certified by the legal keeper thereof, or by a printed book purporting to be published by the authority of such body:

(6) public documents of any other class in a foreign country,—

by the original, or by a copy certified by the legal keeper thereof, with a certificate under the seal of a notary public, or of [7][an Indian Consul] or diplomatic agent, that the copy is duly

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[1] Subs. by the A. O. 1937 for "the Executive Govt. of British India."

[2] Ins. by the A. O. 1937.

[3] Subs. by the A. O. 1950 for "Provincial Government" which had been subs. by the A. O. 1937 for "L. G."

[4] Subs. by the A. O. 1937 for "by order of Govt."

[5] Subs. by the A. O. 1937 for "public Act of the Governor General of India in Council."

[6] Subs. by the A. O. 1950 for "a Province" which had been subs. by the A. O. 1948 for "British India."

[7] Subs. by the A. O. 1950 for "a British Consul."

certified by the officer having the legal custody of the original, and upon proof of the character of the document according to the law of the foreign country.

78A. [illegible]

PRESUMPTIONS AS TO DOCUMENTS.

Presumption as to genuineness of certified copies.

79. The Court shall presume [1][to be genuine] every document purporting to be a certificate, certified copy or other document, which is by law declared to be admissible as evidence of any particular fact and which purports to be duly certified by any officer [2][of the Central Government or of a State Government, or by any officer ~~in a Part B State~~ who is duly authorised thereto by the Central Government]:

Provided that such document is substantially in the form and purports to be executed in the manner directed by law in that behalf.

The Court shall also presume that any officer by whom any such document purports to be signed or certified, held, when he signed it, the official character which he claims in such paper.

Presumption as to documents produced as record of evidence.

80. Whenever any document is produced before any Court, purporting to be a record or memorandum of the evidence, or of any part of the evidence, given by a witness in a judicial proceeding or before any officer authorised by law to take such evidence or to be a statement or confession by any prisoner or accused person, taken in accordance with law, and purporting to be signed by any Judge or Magistrate, or by any such officer as aforesaid, the Court shall presume—

that the document is genuine; that any statements as to the circumstances under which it was taken, purporting to be made by the person signing it, are true, and that such evidence, statement or confession was duly taken.

Presumption as to Gazettes, newspapers, private Acts of Parliament and other documents.

81. The Court shall presume the genuineness of every document purporting to be the London Gazette or [3][any Official Gazette, or the Government Gazette] of any colony dependency or possession of the British Crown, or to be a newspaper or journal, or to be a copy of a private Act of Parliament [4][of the United Kingdom] printed by the Queen's Printer and of every document purporting to be a document directed by any law to be kept by any person, if such document is kept substantially in the form required by law and is produced from proper custody.

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[1] Ins. by the A. O. 1948.

[2] The original words beginning from "in British India" and ending with the words "to be genuine" have been successively amended by the A. O. 1937, A. O. 1948 and A. O. 1950 to read as above.

[3] Subs. by the A. O. 1937 for "the Gazette of India, or the Govt. Gazette of any L. G., or".

[4] Ins. by the A. O. 1950.

(*Chapter V.—Of Documentary Evidence.*)

Presumption as to document admissible in England without proof of seal or signature.

82. When any document is produced before any Court, purporting to be a document which, by the law in force for the time being in England and Ireland, would be admissible in proof of any particular in any Court of Justice in England or Ireland, without proof of the seal or stamp or signature authenticating it or of the judicial or official character claimed by the person by whom it purports to be signed, the Court shall presume that such seal, stamp or signature is genuine, and that the person signing it held, at the time when he signed it, the judicial or official character which he claims.

and the document shall be admissible for the same purpose for which it would be admissible in England or Ireland.

Presumption as to maps or plans made by authority of Government.

83. The Court shall presume that maps or plans purporting to be made by the authority of [1][the Central Government or any State Government] were so made, and are accurate; but maps or plans made for the purposes of any cause must be proved to be accurate.

Presumption as to collections of laws and reports of decisions.

84. The Court shall presume the genuineness of every book purporting to be printed or published under the authority of the Government of any country, and to contain any of the laws of that country,

and of every book purporting to contain reports of decisions of the Courts of such country.

Presumption as to powers-of-attorney.

85. The Court shall presume that every document purporting to be a power-of-attorney, and to have been executed before, and authenticated by, a notary public, or any Court, Judge, Magistrate, [2][Indian] Consul or Vice-Consul, or representative [3]* * * of the [4][Central Government], was so executed and authenticated.

Presumption as to certified copies of foreign judicial records.

86. The Court may presume that any document purporting to be a certified copy of any judicial record of [5][~~a Part B State or of~~ any country not forming part of India or] of Her Majesty's dominions is genuine and accurate, if the document purports to be certified in any manner which is certified by any representative of [6]* * * the [4][Central Government] [7][in or for] [8][~~such Part B State or country~~] to be the manner commonly in use in [9][~~that State or country~~] for the certification of copies of judicial records.

[10][An officer who, with respect to [11][~~a Part B State or~~] any territory

[1] The original word "Government" have successively been amended by the A. O. 1937, A. O. 1948, the Repealing and Amending Act, 1949 (40 of 1949) and the A. O 1950 to read as bove.

[2] Subs. by the A.O. 1950 for "British".

[3] The words "of Her Majesty, or" rep. by the A.O. 1950.

[4] Subs. by the A.O. 1937 for "G. of I".

[5] Subs. by the A.O. 1950 for " any country not forming part."

[6] The words "Her Majesty of " were rep. by the A.O. 1950.

[7] Subs. by the Indian Evidence Act (1872) Amendment Act, 1891 (3 of 1891),s.8, for "resident in".

[8] Subs. by the A.O. 1950 for "such country".

[9] Subs. by the A.O. 1950 for "that country".

[10] Subs. by the Indian Evidence Act, 1899 (5 of 1899) s.4, for the para. added by Act 3 of 1891, s.3.

[11] Ins. by the A. O. 1950.

or place not forming part of [1][India or] Her Majesty's dominions, is a Political Agent therefor, as defined in section 3, [2][clause (43)], of the General Clauses Act, 1897, shall, for the purposes of this section, be deemed to be a representative of the [3][Central Government] [4]~~in and for that Part B State or country~~] comprising that territory or place.]

87. The Court may presume that any book to which it may refer for information on matters of public or general interest, and that any published map or chart, the statements of which are relevant facts and which is produced for its inspection, was written and published by the person and at the time and place, by whom or at which it purports to have been written or published.

Presumption as to books, maps and charts.

88. The Court may presume that a message, forwarded from a telegraph office to the person to whom such message purports to be addressed, corresponds with a message delivered for transmission at the office from which the message purports to be sent; but the Court shall not make any presumption as to the person by whom such message was delivered for transmission.

Presumption as to telegraphic messages.

89. The Court shall presume that every document, called for and not produced after notice to produce, was attested, stamped and executed in the manner required by law.

Presumption as to due execution, etc, of documents not produced.

90. Where any document, purporting or proved to be thirty years old, is produced from any custody which the Court in the particular case considers proper, the Court may presume that the signature and every other part of such document, which purports to be in the handwriting of any particular person, is in that person's handwriting, and, in the case of a document executed or attested, that is was duly executed and attested by the persons by whom it purports to be executed and attested.

Presumption as to documents thirty years old.

Explanation.—Documents are said to be in proper custody if they are in the place in which, and under the care of the person with whom, they would naturally be; but no custody is improper if it is proved to have had a legitimate origin, or if the circumstances of the particular case are such as to render such an origin probable.

This explanation applies also to section 81.

Illustrations.

(*a*) A has been in possession of landed property for a long time. He produces from his custody deeds relating to the land, showing his titles to it. The custody is proper.

(*b*) A produces deeds relating to landed property of which he is the mortgagee. The mortgagor is in possession. The custody is proper.

(*c*) A, a connection of B, produces deeds relating to lands in B's possession which were deposited with him by B for safe custody. The custody is proper.

[1] Ins. by the A.O. 1950.
[2] Subs. by the A.O. 1950 for "clause (40)."
[3] Subs. by the A.O. 1937 for "G. of I."
[4] Subs. by the A.O. 1950 for "in and for the country".

(*Chapter VI.—Of the Exclusion of Oral by Documentary Evidence.*)

CHAPTER VI.

Of the Exclusion of Oral by Documentary Evidence

Evidence of terms of contracts, grants and other dispositions of property reduced to form of document.

91. When the terms of a contract, or of a grant, or of any other disposition of property, have been reduced to the form of a document, and in all cases in which any matter is required by law to be reduced to the form of a document, no evidence[1] shall be given in proof of the terms of such contract, grant or other disposition of property, or of such matter, except the document itself, or secondary evidence of its contents in cases in which secondary evidence is admissible under the provisions hereinbefore contained.

Exception 1.—When a public officer is required by law to be appointed in writing, and when it is shown that any particular person has acted as such officer, the writing by which he is appointed need not be proved.

Exception 2.—Wills [2][admitted to probate in [3][the States] may be proved by the probate.

Explanation 1.—This section applies equally to cases in which the contracts, grants or dispositions of property referred to are contained in one document and to cases in which they are contained in more documents than one.

Explanation 2.—Where there are more originals than one, one original only need be proved.

Explanation 3.—The statement, in any document whatever, of a fact other than the facts referred to in this section, shall not preclude the admission of oral evidence as to the same fact.

Illustrations.

(*a*) If a contract be contained in several letters, all the letters in which it is contained must be proved.

(*b*) If a contract is contained in a bill of exchange, the bill of exchange must be proved.

(*c*) If a bill of exchange is drawn in a set of three, one only need be proved.

(*d*) A contracts, in writing, with B, for the delivery of indigo upon certain terms. The contract mentions the fact that B had paid A the price of other indigo contracted for verbally on another occasion.

Oral evidence is offered that no payment was made for the other indigo. The evidence is admissible.

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[1] Where, however, a Criminal Court finds that a confession or other statement of an accused person has not been recorded in the manner prescribed, evidence may be taken that the recorded statement was duly made—see the Code of Criminal Procedure, 1898 (Act 5 of 1898), s. 533.

[2] Subs. by the Indian Evidence Act Amendment Act (18 of 1872) s. 7, for "under the Indian Succession Act."

[3] Subs. by the A. O. 1950 for "the Provinces" which had been subs. by the A. O. 1948 for "British India."

(*Chapter VI.—Of the Exclusion of Oral by Documentary Evidence.*)

(*e*) A gives B a receipt for money paid by B.
Oral evidence is offered of the payment.
The evidence is admissible.

Exclusion of evidence of oral agreement.

92. When the terms of any such contract, grant or other disposition of property, or any matter required by law to be reduced to the form of a document, have been proved according to the last section, no evidence of any oral agreement or statement shall be admitted, as between the parties to any such instrument or their representatives in interest, for the purpose of contradicting, varying, adding to, or subtracting from, its terms:

Proviso (*1*).—Any fact may be proved which would invalidate any document, or which would entitle any person to any decree or order relating thereto; such as fraud, intimidation,illegality, want of due execution, want of capacity in any contracting party, [1][want or failure] of consideration, or mistake in fact or law.

Proviso (*2*).—The existence of any separate oral agreement as to any matter on which a document is silent, and which is not inconsistent with its terms, may be proved. In considering whether or not this proviso applies, the Court shall have regard to the degree of formality of the document.

Proviso (*3*).—The existence of any separate oral agreement, constituting a condition precedent to the attaching of any obligation under any such contract, grant or disposition of property, may be proved.

Proviso (*4*).—The existence of any distinct subsequent oral agreement to rescind or modify any such contract, grant or disposition of property, may be proved, except in cases in which such contract, grant or disposition of property is by law required to be in writing, or has been registered according to the law in force for the time being as to the registration of documents.

Proviso (*5*).—Any usage or custom by which incidents not expressly mentioned in any contract are usually annexed to contracts of that description, may be proved:

Provided that the annexing of such incident would not be repugnant to, or inconsistent with, the express terms of the contract.

Proviso (*6*).—Any fact may be proved which shows in what manner the language of a document is related to existing facts.

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[1] Subs. by the Indian Evidence Act Amendment Act (18 of 1872), s. 8, for "want of failure."

(*Chapter VI.—Of the Exclusion of Oral by Documentary Evidence.*)

Illustrations.

(*a*) A policy of insurance is effected on goods "in ships from Calcutta to London." The goods are shipped in a particular ship which is lost. The fact that that particular ship was orally expected from the policy cannot be proved.

(*b*) A agrees absolutely in writing to pay B Rs. 1,000 on the first March, 1873. The fact that, at the same time an oral agreement was made that the money should not be paid till the thirty-first March cannot be proved.

(*c*) An estate called "the Rampore tea estate" is sold by a deed which contains a map of the property sold. The fact that land not included in the map had always been regarded as part of the estate and was meant to pass by the deed cannot be proved.

(*d*) A enters into a written contract with B to work certain mines, the property of B, upon certain terms. A was induced to do so by a misrepresentation of B's as to their value. This fact may be proved.

(*e*) A institutes a suit against B for the specific performance of a contract, and also prays that the contract may be reformed as to one of its provisions, as that provision was inserted in it by mistake. A may prove that such a mistake was made as would by law entitle him to have the contract reformed.

(*f*) A orders goods of B by a letter in which nothing is said as to the time of payment, and accepts the goods on delivery. B sues A for the price. A may show that the goods were supplied on credit for a term still unexpired.

(*g*) A sells B a horse and verbally warrants him sound. A gives B a paper in these words: "Bought of A a horse for Rs. 500". B may prove the verbal warranty.

(*h*) A hires lodgings of B, and gives a card on which is written—"Rooms, Rs. 200 a month." A may prove a verbal agreement that these terms were to include partial board

A hires lodgings of B for a year, and a regularly stamped agreement, drawn up by an attorney, is made between them. It is silent on the subject of board. A may not prove that board was included in the term verbally.

(*i*) A applies to B for a debt due to A by sending a receipt for the money. B keeps the receipt and does not send the money. In a suit for the amount A may prove this.

(*ii*) A and B make a contract in writing to take effect upon the happening of a certain contingency. The writing is left with B, who sues A upon it. A may show the circumstances under which it was delivered.

Exclusion of evidence to explain or amend ambiguous document.

93. When the language used in a document is, on its face, ambiguous or defective, evidence may not be given of facts which would show its meaning or supply its defects.

Illustrations.

(*a*) A agrees, in writing, to sell a horse to B for Rs. 1,000 or Rs. 1,500. Evidence canot be given to show which price was to be given.

(*b*) A deed contains blanks. Evidence cannot be given of facts which would show how they were meant to be filled.

Exclusion of evidence against application of document to existing facts.

94. When language used in a document is plain in itself, and when it applies accurately to existing facts, evidence may not be given to show that it was not meant to apply to such facts.

Illustration.

A sells to B, by deed, "my estate at Rampur containing 100 bighas." A has an estate at Rampur containing 100 bighas. Evidence may not be given of the fact that the estate meant to be sold was one situated at a different place and of a different size.

(Chapter VI.—Of the Exclusion of Oral by Documentary Evidence.)

95. When language used in a document is plain in itself, but is unmeaning in reference to existing facts, evidence may be given to show that it was used in a peculiar sense.

Evidence as to document unmeaning in reference to existing facts.

Illustration.

A sells to B, by deed, "my house in Calcutta."

A had no house in Calcutta, but it appears that he had a house at Howrah, of which B had been in possession since the execution of the deed.

These facts may be proved to show that the deed related to the house at Howrah.

96. When the facts are such that the language used might have been meant to apply to any one, and could not have been meant to apply to more than one, of several persons or things, evidence may be given of facts which show which of those persons or things it was intended to apply to.

Evidence as to application of language which can apply to one only of several persons.

Illustrations.

(*a*) A agrees to sell to B, for Rs. 1,000, "my white horse." A has two white horses. Evidence may be given of facts which show which of them was meant.

(*b*) A agrees to accompany B to Haidarabad. Evidence may be given of facts showing whether Haidarabad in the Dekkhan or Haidarabad in Sind was meant.

97. When the language used applies partly to one set of existing facts, and partly to another set of existing facts, but the whole of it does not apply correctly to either, evidence may be given to show to which of the two it was meant to apply.

Evidence as to application of language to one of two sets of facts, to neither of which the whole correctly applies.

Illustration.

A agrees to sell to B "my land at X in the occupation of Y". A has land at X, but not in the occupation of Y, and he has land in the occupation of Y, but it is not at X. Evidence may be given of facts showing which he meant to sell.

98. Evidence may be given to show the meaning of illegible or not commonly intelligible characters, of foreign, obsolete, technical, local and provincial expressions, of abbreviations and of words used in a peculiar sense.

Evidence as to meaning of illegible characters, etc.

Illustration.

A, sculptor, agrees to sell to B, "all my mods." A has both models and modelling tools. Evidence may be given to show which he meant to sell.

99. Persons who are not parties to a document, or their representatives in interest, may give evidence of any facts tending to show a contemporaneous agreement varying the terms of the document.

Who may give evidence of agreement varying terms of document.

Illustration.

A and B make a contract in writing that B shall sell A certain cotton, to be paid for on delivery. At the same time they make an oral agreement that three months' credit shall be given to A. This could not be shown as between A and B, but it might be shown by C, if it affected his interests.

100. Nothing in this Chapter contained shall be taken to affect any of the provisions of the Indian Succession Act (X of 1865)[1] as to the construction of wills.

Saving of provisions of Indian Succession Act relating to wills.

[1] *See* now the Indian Sucession Act, 1925 (39 of 1925), Pt. VI, Ch. VI.

(*Chapter VII.—Of the Burden of Proof.*)

PART III.

PRODUCTION AND EFFECT OF EVIDENCE.

CHAPTER VII.

OF THE BURDEN OF PROOF.

Burden of proof.

101. Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist.

When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.

Illustrations.

(*a*) A desires a Court to give judgment that B shall be punished for a crime which A says B has committed.

A must prove that B has committed the crime.

(*b*) A desires a Court to give judgment that he is entitled to certain land in the possession of B, by reason of facts which he asserts, and which B denies, to be true.

A must prove the existence of those facts.

On whom burden of proof lies.

102. The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.

Illustrations.

(*a*) A sues B for land of which B is in possession, and which, as A asserts, was left to A by the will of C, B's father.

If no evidence were given on either side, B would be entitled to retain his possession.

Therefore the burden of proof is on A.

(*b*) A sues B for money due on a bond.

The execution of the bond is admitted, but B says that it was obtained by fraud, which A denies.

If no evidence were given on either side, A would succeed as the bond is not disputed and the fraud is not proved.

Therefore the burden of proof is on B.

Burden of proof as to particular fact.

103. The burden of proof as to any particular fact lies on that person who wishes the Court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.

Illustration.

[1][(*a*)] A prosecutes B for theft, and wishes the Court to believe that B admitted the theft to C. A must prove the admission.

B wishes the Court to believe that, at the time in question, he was elsewhere. He must prove it.

Burden of proving fact to be proved to make evidence admissible.

104. The burden of proving any fact necessary to be proved in order to enable any person to give evidence of any other fact is on the person who wishes to give such evidence.

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[1] *Sic.* In the Act as published in Gazette of India, 1872, Pt. IV. p. 1, there is no illustration (*b*).

(Chapter VII.—Of the Burden of Proof.)

Illustrations.

(*a*) A wishes to prove a dying declaration by B. A must prove B's death.

(*b*) A wishes to prove, by secondary evidence, the contents of a lost document.

A must prove that the document has been lost.

105. When a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the General Exceptions in the Indian Penal Code, or within any special exception or proviso contained in any other part of the same Code, or in any law defining the offence, is upon him, and the Court shall presume the absence of such circumstances.

XLV of 1860.

Burden of proving that case of accused comes within exceptions.

Illustrations.

(*a*) A, accused of murder, alleges that, by reason of unsoundness of mind, he did not know the nature of the act.

The burden of proof is on A.

(*b*) A, accused of murder, alleges that, by grave and sudden provocation, he was deprived of the power of self-control.

The burden of proof is on A.

XLV of 1860.

(*c*) Section 325 of the Indian Penal Code provides that whoever, except in the case provided for by section 335, voluntarily causes grievous hurt, shall be subject to certain punishments.

A is charged with voluntarily causing grievous hurt under section 325.

The burden of proving the circumstances bringing the case under section 335 lies on A.

106. When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.

Burden of proving fact especially within knowledge.

Illustrations.

(*a*) When a person does an act with some intention other than that which the character and circumstances of the act suggest, the burden of proving that intention is upon him.

(*b*) A is charged with travelling on a railway without a ticket. The burden of proving that he had a ticket is on him.

107. When the question is whether a man is alive or dead, and it is shown that he was alive within thirty years, the burden of proving that he is dead is on the person who affirms it.

Burden of proving death of person known to have been alive within thirty years.

108. [1][Provided that when] the question is whether a man is alive or dead, and it is proved that he has not been heard of for seven years by those who would naturally have heard of him if he had been alive, the burden of proving that he is alive is [2][shifted to] the person who affirms it.

Burden of proving that person is alive who has not been heard of for seven years.

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[1] Subs. by the Indian Evidence Act Amendment Act (18 of 1872), s. 9, for "When".

[2] Subs. by s. 9, *ibid* for "on".

(*Chapter VII.—Of the Burden of Proof.*)

Burden of proof as to relationship in the cases of partners, landlord and tenant, principal and agent.

109. When the question is whether persons are partners, landlord and tenant, or principal and agent, and it has been shown that they have been acting as such, the burden of proving that they do not stand, or have ceased to stand, to each other in those relationships respectively, is on the person who affirms it.

Burden of proof as to ownership.

110. When the question is whether any person is owner of anything of which he is shown to be in possession, the burden of proving that he is not the owner is on the person who affirms that he is not the owner.

Proof of good faith in transactions where one party is in relation of active confidence.

111. Where there is a question as to the good faith of a transaction between parties, one of whom stands to the other in a position of active confidence, the burden of proving the good faith of the transaction is on the party who is in a position of active confidence.

Illustrations.

(*a*) The good faith of a sale by a client to an attorney is in question in a suit brought by the client. The burden of proving the good faith of the transaction is on the attorney.

(*b*) The good faith of a sale by a son just come of age to a father is in question in a suit brought by the son. The burden of proving the good faith of the transaction is on the father.

Birth during marriage conclusive proof of legitimacy.

112. The fact that any person was born during the continuance of a valid marriage between his mother and any man, or within two hundred and eighty days after its dissolution, the mother remaining unmarried, shall be conclusive proof that he is the legitimate son of that man, unless it can be shown that the parties to the marriage had no access to each other at any time when he could have been begotten.

Proof of cession of territory.

113. A notification in the [1][Official Gazette] that any portion of British territory has [2][before the commencement of Part III of the Government of India Act, 1935] been ceded to any Native State, Prince or Ruler, shall be conclusive proof that a valid cession of such territory took place at the date mentioned in such notification. 26 Geo. 5, ch. 2.

Court may presume existence of certain facts.

114. The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case.

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[1] Subs. by the A. O. 1937 for "Gazette of India."

[2] Ins. by the A. O. 1937 Part III of the G. of I. Act, 1935, came into force on the 1st April 1937.

(*Chapter VII.—Of the Burden of Proof.*)

Illustrations.

The Court may presume—

(*a*) that a man who is in possession of stolen goods soon after the theft is either the thief or has received the goods knowing them to be stolen, unless he can account for his possession;

(*b*) that an accomplice is unworthy of credit, unless he is corroborated in material particulars;

(*c*) that a bill of exchange, accepted or endorsed, was accepted or endorsed for good consideration;

(*d*) that a thing or state of things which has been shown to be in existence within a period shorter than that within which such things or states of things usually cease to exist, is still in existence;

(*e*) that judicial and official acts have been regularly performed;

(*f*) that the common course of business has been followed in particular cases;

(*g*) that evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it;

(*h*) that, if a man refuses to answer a question which he is not compelled to answer by law, the answer, if given, would be unfavourable to him;

(*i*) that when a document creating an obligation is in the hands of the obligor, the obligation has been discharged.

But the Court shall also have regard to such facts as the following, in considering whether such maxims do or do not apply to the particular case before it:—

as to *illustration* (*a*)—a shop-keeper has in his till a marked rupee soon after it was stolen, and cannot account for its possession specifically, but is continually receiving rupees in the course of his business:

as to *illustration* (*b*)—A, a person of the highest character is tried for causing a man's death by an act of negligence in arranging certain machinery. B, a person of equally good character, who also took part in the arrangement, describes precisely what was done, and admits and explains the common carelessness of A and himself:

as to *illustration* (*b*)—a crime is committed by several persons. A, B and C, three of the criminals, are captured on the spot and kept apart from each other. Each gives an account of the crime implicating D, and the accounts corroborate each other in such a manner as to render previous concert highly improbable:

as to *illustration* (*c*)—A, the drawer of a bill of exchange, was a man of business. B, the acceptor, was a young and ignorant person, completely under A's influence:

as to *illustration* (*d*)—it is proved that a river ran in a certain course five years ago, but it is known that there have been floods since that time which might change its course:

as to *illustration* (*e*)—a judicial act, the regularity of which is in question, was performed under exceptional circumstances;

as to *illustration* (*f*)—the question is, whether a letter was received. It is shown to have been posted, but the usual course of the post was interrupted by disturbances:

as to *illustration* (*g*)—a man refuses to produce a document which would bear on a contract of small importance on which he is sued, but which might also injure the feelings and reputation of his family:

as to *illustration* (*h*)—a man refuses to answer a question which he is not compelled by law to answer, but the answer to it might cause loss to him in matters unconnected with the matter in relation to which it is asked:

as to *illustration* (*i*)—a bond is in possession of the obligor, but the circumstances of the case are such that he may have stolen it.

CHAPTER VIII.

ESTOPPEL.

Estoppel.

115. When one person has, by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative shall be allowed, in any suit or proceeding between himself and such person or his representative, to deny the truth of that thing.

Illustrations.

A intentionally and falsely leads B to believe that certain land belongs to A, and thereby induces B to buy and pay for it.

The land afterwards becomes the property of A, and A seeks to set aside the sale on the ground that, at the time of the sale, he had no title. He must not be allowed to prove his want of title.

Estoppel of tenant; and of licensee of person in possession.

116. No tenant of immoveable property, or person claiming through such tenant, shall, during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such immoveable property; and no person who came upon any immoveable property by the license of the person in possession thereof shall be permitted to deny that such person had a title to such possession at the time when such license was given.

Estoppel of acceptor of bill of exchange, bailee or licensee.

117. No acceptor of a bill of exchange shall be permitted to deny that the drawer had authority to draw such bill or to endorse it; nor shall any bailee or licensee be permitted to deny that his bailer or licensor had, at the time when the bailment or license commenced, authority to make such bailment or grant such license.

Explanation (*1*).—The acceptor of a bill of exchange may deny that the bill was really drawn by the person by whom it purports to have been drawn.

Explanation (*2*).—If a bailee delivers the goods bailed to a person other than the bailor, he may prove that such person had a right to them as against the bailor.

CHAPTER IX.

OF WITNESSES.

Who may testify.

118. All persons shall be competent to testify unless the Court considers that they are prevented from understanding the questions put to them, or from giving rational answers to those questions, by tender years, extreme old age, disease, whether of body or mind, or any other cause of same kind.

Explanation.—A lunatic is not incompetent to testify, unless he is prevented by his lunacy from understanding the questions put to him and giving rational answers to them.

Dumb witnesses.

119. A witness who is unable to speak may give his evidence in any other manner in which he can make it intelligible, as by writing or by signs; but such writing must be written and the signs made in open Court. Evidence so given shall be deemed to be oral evidence.

Parties to civil suit, and their wives or husbands. Husband or wife of person under criminal trial.

120. In all civil proceedings the parties to the suit, and the husband or wife of any party to the suit, shall be competent witnesses. In criminal proceedings against any person, the husband or wife of such person, respectively, shall be a competent witness.

Judges and Magistrates.

121. No Judge or Magistrate shall, except upon the special order of some Court to which he is subordinate, be compelled to answer any questions as to his own conduct in Court as such Judge or Magistrate, or as to anything which came to his knowledge in Court as such Judge or Magistrate: but he may be examined as to other matters which occurred in his presence whilst he was so acting.

Illustrations.

(*a*) A, on his trial before the Court of Session, says that a deposition was improperly taken by B, the Magistrate. B cannot be compelled to answer questions as to this, except upon the special order of a superior Court.

(*b*) A is accused before the Court of Session of having given false evidence before B, a Magistrate. B cannot be asked what A said, except upon the special order of the superior Court.

(*c*) A is accused before the Court of Session of attempting to murder a police-officer whilst on his trial before B, a Sessions Judge. B may be examined as to what occurred.

Communications during marriage.

122. No person who is or has been married shall be compelled to disclose any communication made to him during marriage by any person to whom he is or has been married; nor shall he be permitted to disclose any such communication, unless the person who made it, or his representative in interest, consents, except in suits between married persons, or proceedings in which one married person is prosecuted for any crime committed against the other.

Evidence as to affairs of State.

123. No one shall be permitted to give any evidence derived from unpublished official records relating to any affairs of State, except with the permission of the officer at the head of the department concerned, who shall give or withhold such permission as he thinks fit.

Official communications.

124. No public officer shall be compelled to disclose communications made to him in official confidence, when he considers that the public interests would suffer by the disclosure.

Information as to commission of offences.

[1][**125.** No Magistrate or Police-officer shall be compelled to say whence he got any information as to the commission of any offence, and no Revenue-officer shall be compelled to say whence he got any information as to the commission of any offence against the public revenue.

Explanation.—"Revenue-officer" in this section means any officer employed in or about the business of any branch of the public revenue.]

Professional communications.

126. No barrister, attorney, pleader or vakil shall at any time be permitted, unless with his client's express consent, to disclose any communication made to him in the course and for the purpose of his employment as such barrister, pleader, attorney or vakil, by or on behalf of his client, or to state the contents or condition of any document with which he has become acquainted in the course and for the purpose of his professional employment, or to disclose any advice given by him to his client in the course and for the purpose of such employment:

Provided that nothing in this section shall protect from disclosure—

(1) any such communication made in furtherance of any [2][illegal] purpose:

(2) any fact observed by any barrister, pleader, attorney or vakil, in the course of his employment as such, showing that any crime or fraud has been committed since the commencement of his employment.

It is immaterial whether the attention of such barrister, [3][pleader], attorney or vakil was or was not directed to such fact by or on behalf of his client.

Explanation.—The obligation stated in this section continues after the employment has ceased.

Illustrations.

(*a*) A, a client, says to B, an attorney—"I have committed forgery and I wish you to defend me."

As the defence of a man known to be guilty is not a criminal purpose, this communication is protected from disclosure.

(*b*) A, a client says to B, an attorney—"I wish to obtain possession of property by the use of a forged deed on which I request you to sue."

The communication, being made in furtherance of a criminal purpose, is not protected from disclosure.

(*c*) A, being charged with embezzlement, retains B, an attorney, to defend him. In the course of the proceedings, B observes that an entry has been made in A's account book, charging A with the sum said to have been embezzled, which entry was not in the book at the commencement of his employment.

This being a fact observed by B in the course of his employment, showing that a fraud has been committed since the commencement of the proceedings, it is not protected from disclosure.

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[1] Subs. by the Indian Evidence Act (1872) Amendment Act, 1887 (3 of 1887), s. 1, for the original s. 125.

[2] Subs. by the Indian Evidence Act Amendment Act (18 of 1872), s. 10, for "criminal".

[3] Ins. by s. 10, *ibid.*

(*Chapter IX.—Of Witnesses.*)

127. The provisions of section 126 shall apply to interpreters, and the clerks or servants of barristers, pleaders, attorneys and vakils.

Section 126 to apply to interpreters, etc.

128. If any party to a suit gives evidence therein at his own instance or otherwise, he shall not be deemed to have consented thereby to such disclosure as is mentioned in section 126; and, if any party to a suit or proceeding calls any such barrister, [1][pleader], attorney or vakil as a witness, he shall be deemed to have consented to such disclosure only if he questions such barrister, attorney or vakil on matters which, but for such question, he would not be at liberty to disclose.

Privilege not waived by volunteering evidence.

129. No one shall be compelled to disclose to the Court any confidential communication which has taken place between him and his legal professional adviser, unless he offers himself as a witness, in which case he may be compelled to disclose any such communications as may appear to the Court necessary to be known in order to explain any evidence which he has given, but no others.

Confidential communications with legal advisers.

130. No witness who is not a party to a suit shall be compelled to produce his title-deeds to any property or any document in virtue of which he holds any property as pledgee or mortgagee or any document the production of which might tend to criminate him, unless he has agreed in writing to produce them with the person seeking the production of such deeds or some person through whom he claims.

Production of title-deed of witness, not a party.

131. No one shall be compelled to produce documents in his possession, which any other person would be entitled to refuse to produce if they were in his possession, unless such last-mentioned person consents to their production.

Production of documents which another person, having possession, could refuse to produce.

132. A witness shall not be excused from answering any question as to any matter relevant to the matter in issue in any suit or in any civil or criminal proceeding, upon the ground that the answer to such question will criminate, or may tend directly or indirectly to criminate, such witness, or that it will expose, or tend directly or indirectly to expose, such witness to a penalty or forfeiture of any kind:

Witness not excused from answering on ground that answer will criminate.

Provided that no such answer, which a witness shall be compelled to give, shall subject him to any arrest or prosecution, or be proved against him in any criminal proceeding, except a prosecution for giving false evidence by such answer.

Proviso

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[1] Ins. by the Indian Evidence Act Amendment Act (18 of 1872), s. 10.

(*Chapter IX.—Of Witnesses. Chapter X.—Of the Examination of Witnesses.*)

Accomplice.

133. An accomplice shall be a competent witness against an accused person; and a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice.

Number of witnesses.

134. No particular number of witnesses shall in any case be required for the proof of any fact.

CHAPTER X.

OF THE EXAMINATION OF WITNESSES.

Order of production and examination of witnesses.

135. The order in which witnesses are produced and examined shall be regulated by the law and practice for the time being relating to civil and criminal procedure respectively, and, in the absence of any such law, by the discretion of the Court.

Judge to decide as to admissibility of evidence.

136. When either party proposes to give evidence of any fact, the Judge may ask the party proposing to give the evidence in what manner the alleged fact, if proved, would be relevant; and the Judge shall admit the evidence if he thinks that the fact, if proved, would be relevant and not otherwise.

If the fact proposed to be proved is one of which evidence is admissible only upon proof of some other fact, such last-mentioned fact must be proved before evidence is given of the fact first mentioned, unless the party undertakes to give proof of such fact, and the Court is satisfied with such undertaking.

If the relevancy of one alleged fact depends upon another alleged fact being first proved, the Judge may, in his discretion, either permit evidence of the first fact to be given before the second fact is proved, or require evidence to be given of the second fact before evidence is given of the first fact.

Illustrations.

(*a*) It is proposed to prove a statement about a relevant fact by a person alleged to be dead, which statement is relevant under section 32.

The fact that the person is dead must be proved by the person proposing to prove the statement, before evidence is given of the statement.

(*b*) It is proposed to prove, by a copy, the contents of a document said to be lost.

The fact that the original is lost must be proved by the person proposing to produce the copy, before the copy is produced.

(*c*) A is accused of receiving stolen property knowing it to have been stolen.

It is proposed to prove that he denied the possession of the property.

The relevancy of the denial depends on the identity of the property. The Court may, in its discretion, either require the property to be identified before the denial of the possession is proved, or permit the denial of possession to be proved before the property is identified.

(*d*) It is proposed to prove a fact (A) which is said to have been the cause or effect of a fact in issue. There are several intermediate facts (B, C and D) which must be shown to exist before the fact (A) can be regarded as the cause or effect of the fact in issue. The Court may either permit A to be proved before B, C and D is proved, or may require proof of B, C and D before permitting proof of A.

137. The examination of a witness by the party who calls him shall be called his examination-in-chief. Examination-in-chief.

The examination of a witness by the adverse party shall be called his cross-examination. Cross-examination.

The examination of a witness, subsequent to the cross-examination by the party who called him, shall be called his re-examination. Re-examination.

138. Witnesses shall be first examined-in-chief, then (if the adverse party so desires) cross-examined, then (if the party calling him so desires) re-examined. Order of examinations.

The examination and cross-examination must relate to relevant facts but the cross-examination need not be confined to the facts to which the witness testified on his examination-in-chief.

The re-examination shall be directed to the explanation of matters referred to in cross-examination; and, if new matter is, by permission of the Court, introduced in re-examination, the adverse party may further cross-examine upon that matter. Direction of re-examination.

139. A person summoned to produce a document does not become a witness by the mere fact that he produces it and cannot be cross-examined unless and until he is called as a witness. Cross-examination of person called to produce a document.

140. Witnesses to character may be cross-examined and re-examined. Witnesses to character.

141. Any question suggesting the answer which the person putting it wishes or expects to receive is called a leading question. Leading questions.

142. Leading questions must not, if objected to by the adverse party be asked in an examination-in-chief, or in a re-examination, except with the permission of the Court. When they must not be asked.

The Court shall permit leading questions as to matters which are introductory or undisputed, or which have, in its opinion, been already sufficiently proved.

143. Leading questions may be asked in cross-examination. When they may be asked.

144. Any witness may be asked, whilst under examination, whether any contract, grant or other disposition of property, as to which he is giving evidence, was not contained in a document, and if he says that it was, or Evidence as to matters in writing.

if he is about to make any statement as to the contents of any document, which, in the opinion of the Court, ought to be produced, the adverse party may object to such evidence being given until such document is produced, or until facts have been proved which entitle the party who called the witness to give secondary evidence of it.

Explanation.—A witness may give oral evidence of statements made by other persons about the contents of documents if such statements are in themselves relevant facts.

Illustration.

The question is, whether A assaulted B.

C deposes that he heard A say to D—"B wrote a letter accusing me of theft, and I will be revenged on him." This statement is relevant, as showing A's motive for the assault, and evidence may be given of it, though no other evidence is given about the letter.

Cross-examination as to previous statements in writing.

[1]**145.** A witness may be cross-examined as to previous statements made by him in writing or reduced into writing, and relevant to matters in question, without such writing being shown to him, or being proved; but, if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him.

Questions lawful in cross-examination.

146. When a witness is cross-examined, he may, in addition to the questions hereinbefore referred to, be asked any questions which tend—

(1) to test his veracity,

(2) to discover who he is and what is his position in life, or

(3) to shake his credit, by injuring his character, although the answer to such questions might tend directly or indirectly to criminate him or might expose or tend directly or indirectly to expose him to a penalty or forfeiture.

When witness to be compelled to answer.

147. If any such question relates to a matter relevant to the suit or proceeding, the provisions of section 132 shall apply thereto.

Court to decide when question shall be asked and when witness compelled to answer.

148. If any such question relates to a matter not relevant to the suit or proceeding, except in so far as it affects the credit of the witness by injuring his character, the Court shall decide whether or not the witness shall be compelled to answer it, and may, if it thinks fit, warn the witness that he is not obliged to answer it. In exercising its discretion, the Court shall have regard to the following considerations:—

(1) such questions are proper if they are of such a nature that the truth of the imputation conveyed by them would seriously affect

[1] As to the application of s. 145 to police-diaries, *see* the Code of Criminal Procedure, 1898 (Act 5 of 1898), s. 172.

the opinion of the Court as to the credibility of the witness on the matter to which he testifies:

(2) such questions are improper if the imputation which they convey relates to matters so remote in time, or of such a character, that the truth of the imputation would not affect, or would affect in a slight degree, the opinion of the Court as to the credibility of the witness on the matter to which he testifies:

(3) such questions are improper if there is a great disproportion between the importance of the imputation made against the witness's character and the importance of his evidence:

(4) the Court may, if it sees fit, draw, from the witness's refusal to answer, the inference that the answer if given would be unfavourable.

Question not to be asked without reasonable grounds.

149. No such question as is referred to in section 148 ought to be asked, unless the person asking it has reasonable grounds for thinking that the imputation which it conveys is well-founded.

Illustrations.

(*a*) A barrister is instructed by an attorney or vakil that an important witness is a dakait. This is a reasonable ground for asking the witness whether he is a dakait.

(*b*) A pleader is informed by a person in Court that an important witness is a dakait. The informant, on being questioned by the pleader, gives satisfactory reasons for his statement. This is a reasonable ground for asking the witness whether he is a dakait.

(*c*) A witness, of whom nothing whatever is known is asked at random whether he is a dakait. There are here no reasonable grounds for the question.

(*d*) A witness, of whom nothing whatever is known, being questioned as to his mode of life and means of living, gives unsatisfactory answers. This may be a reasonable ground for asking him if he is a dakait.

Procedure of Court in case of question being asked without reasonable grounds.

150. If the Court is of opinion that any such question was asked without reasonable grounds, it may, if it was asked by any barrister, pleader, vakil or attorney, report the circumstances of the case to the High Court or other authority to which such barrister, pleader, vakil or attorney is subject in the exercise of his profession.

Indecent and scandalous questions.

151. The Court may forbid any questions or inquiries which it regards as indecent or scandalous, although such questions or inquiries may have some bearing on the questions before the Court unless they relate to facts in issue, or to matters necessary to be known in order to determine whether or not the facts in issue existed.

(*Chapter X.— Of the Examination of Witnesses.*)

Questions intended to insult or annoy.

152. The Court shall forbid any question which appears to it to be intended to insult or annoy, or which, though proper in itself, appears to the Court needlessly offensive in form.

Exclusion of evidence to contradict answers to questions testing veracity.

153. When a witness has been asked and has answered any question which is relevant to the inquiry only in so far as it tends to shake his credit by injuring his character, no evidence shall be given to contradict him: but, if he answers falsely, he may afterwards be charged with giving false evidence.

Exception 1.—If a witness is asked whether he has been previously convicted of any crime and denies it, evidence may be given of his previous conviction.

Exception 2.—If a witness is asked any question tending to impeach his impartiality and answers it by denying the facts suggested, he may be contradicted.

Illustrations.

(*a*) A claim against an underwriter is resisted on the ground of fraud.

The claimant is asked whether, in a former transaction, he had not made a fraudulent claim. He denies it.

Evidence is offered to show that he did make such a claim.

The evidence is inadmissible.

(*b*) A witness is asked whether he was not dismissed from a situation for dishonesty.

He denies it.

Evidence is offered to show that he was dismissed for dishonesty.

The evidence is not admissible.

(*c*) A affirms that on a certain day he saw B at Lahore.

A is asked whether he himself was not on that day at Calcutta. He denies it. Evidence is offered to show that A was on that day at Calcutta.

The evidence is admissible, not as contradicting A on a fact which affects his credit, but as contradicting the alleged fact that B was seen on the day in question in Lahore.

In each of these cases the witness might, if his denial was false, be charged with giving false evidence.

(*d*) A is asked whether his family has not had a bloodfeud with the family of B against whom he gives evidence.

He denies it. He may be contradicted on the ground that the question tends to impeach his impartiality.

Question by party to his own witness.

154. The Court may, in its discretion, permit the person who calls a witness to put any questions to him which might be put in cross-examination by the adverse party.

(*Chapter X.—Of the Examination of Witnesses.*)

155. The credit of a witness may be impeached in the following ways by the adverse party, or, or with the consent of the Court, by the party who calls him:— Impeaching credit of witness.

(1) by the evidence of persons who testify that they, from their knowledge of the witness, believe him to be unworthy of credit;

(2) by proof that the witness has been bribed, or has [accepted][1] the offer of a bribe, or has received any other corrupt inducement to give his evidence;

(3) by proof of former statements inconsistent with any part of his evidence which is liable to be contradicted;

(4) when a man is prosecuted for rape or an attempt to ravish, it may be shown that the prosecutrix was of generally immoral character.

Explanation.—A witness declaring another witness to be unworthy of credit may not, upon his examination-in-chief, give reasons for his belief, but he may be asked his reasons in cross-examination, and the answers which he gives cannot be contradicted, though, if they are false, he may afterwards be charged with giving false evidence.

Illustrations.

(*a*) A sues B for the price of goods sold and delivered to B. C says that A delivered the goods to B.

Evidence is offered to show that, on a previous occasion, he said that he had not delivered the goods to B.

The evidence is admissible.

(*b*) A is indicated for the murder of B.

C says that B, when dying, declared that A had given B the wound of which he died.

Evidence is offered to show that, on a previous occasion, C said that the wound was not given by A or in his presence.

The evidence is admissible.

156. When a witness whom it is intended to corroborate gives evidence of any relevant fact, he may be questioned as to any other circumstances which he observed at or near to the time or place at which such relevant fact occurred, if the Court is of opinion that such circumstances, if proved, would corroborate the testimony of the witness as to the relevant fact which he testifies. Questions tending to corroborate evidence of relevant fact admissible.

Illustration.

A, an accomplice, gives an account of a robbery in which he took part. He describes various incidents unconnected with the robbery which occurred on his way to and from the place where it was committed.

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[1] Subs. by the Indian Evidence Act Amendment Act (18 of 1872) s. 11, for "had".

Independent evidence of these facts may be given in order to corroborate his evidence as to the robbery itself.

Former statements of witness may be proved to corroborate later testimony as to same fact.

157. In order to corroborate the testimony of a witness, any former statement made by such witness relating to the same fact at or about the time when the fact took place, or before any authority legally competent to investigate the fact, may be proved.

What matters may be proved in connection with proved statement relevant under section 32 or 33.

158. Whenever any statement, relevant under section 32 or 33, is proved, all matters may be proved either in order to contradict or to corroborate it, or in order to impeach or confirm the credit of the person by whom it was made, which might have been proved if that person had been called as a witness and had denied upon cross-examination the truth of the matter suggested.

Refreshing memory.

159. A witness may, while under examination, refresh his memory by referring to any writing made by himself at the time of the transaction concerning which he is questioned, or so soon afterwards that the Court considers it likely that the transaction was at that time fresh in his memory.

The witness may also refer to any such writing made by any other person, and read by the witness within the time aforesaid, if when he read it he knew it to be correct.

When witness may use copy of document to refresh memory.

Whenever a witness may refresh his memory by reference to any document, he may, with the permission of the Court, refer to a copy of such document:

Provided the Court be satisfied that there is sufficient reason for the non-production of the original.

An expert may refresh his memory by reference to professional treatises.

Testimony to facts stated in document mentioned in section 159.

160. A witness may also testify to facts mentioned in any such document as is mentioned in section 159, although he has no specific recollection of the facts themselves, if he is sure that the facts were correctly recorded in the document.

Illustration.

A book-keeper may testify to facts recorded by him in books regularly kept in the course of business, if he knows that the books were correctly kept, although he has forgotten the particular transactions entered.

(*Chapter X.—Of the Examination of Witnesses.*)

[1]**161.** Any writing referred to under the provisions of the two last preceding sections must be produced and shown to the adverse party if he requires it: such party may, if he pleases, cross-examine the witness thereupon.

Right of adverse party as to writing used to refresh memory.

162. A witness summoned to produce a document shall, if it is in his possession or power, bring it to Court, notwithstanding any objection which there may be to its production or to its admissibility. The validity of any such objection shall be decided on by the Court.

Production of documents.

The Court, if it sees fit, may inspect the document, unless it refers to matters of State, or take other evidence to enable it to determine on its admissibility.

If for such a purpose it is necessary to cause any document to be translated, the Court may, if it thinks fit, direct the translator to keep the contents secret, unless the document is to be given in evidence: and, if the interpreter disobeys such direction, he shall be held to have committed an offence under section 166 of the Indian Penal Code.

Translation of documents.

XLV of 1860.

163. When a party calls for a document which he has given the other party notice to produce, and such document is produced and inspected by the party calling for its production, he is bound to give it as evidence if the party producing it requires him to do so.

Giving, as evidence, of document called for and produced on notice.

164. When a party refuses to produce a document which he has had notice to produce, he cannot afterwards use the document as evidence without the consent of the other party or the order of the Court.

Using, as evidence, of document production of which was refused on notice.

Illustration.

A sues B on an agreement and gives B notice to produce it. At the trial A calls for the document and B refuses to produce it. A gives secondary evidence of its contents. B seeks to produce the document itself to contradict the secondary evidence given by A, or in order to show that the agreement is not stamped He cannot do so.

165. The Judge may, in order to discover or to obtain proper proof of relevant facts, ask any question he pleases, in any form, at any time, of any witness, or of the parties about any fact relevant or irrelevant; and may order the production of any document or thing: and neither the parties nor their agents shall be entitled to make any objection to any such question or order, nor, without the leave of the Court, to cross-examine any witness upon any answer given in reply to any such question:

Judge's power to put questions or order production.

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[1] As to the application of s. 161 to police-diaries, *see* the Code of Criminal Procedure, 1898 (Act 5 of 1898), s. 172.

(Chapter X.—Of the Examination of Witnesses. Chapter XI.—Of Improper Admission and Rejection of Evidence. Schedule.)

Provided that the judgment must be based upon facts declared by this Act to be relevant, and duly proved:

Provided also that this section shall not authorize any Judge to compel any witness to answer any question or to produce any document which such witness would be entitled to refuse to answer or produce under sections 121 to 131, both inclusive, if the question were asked or the document were called for by the adverse party; nor shall the Judge ask any question which it would be improper for any other person to ask under section 148 or 149; nor shall he dispense with primary evidence of any document, except in the cases hereinbefore excepted.

Power of jury or assessors to put questions.

166. In cases tried by jury or with assessors, the jury or assessors may put any questions to the witnesses, through or by leave of the Judge, which the Judge himself might put and which he considers proper.

CHAPTER XI.

Of Improper Admission and Rejection of Evidence.

No new trial for improper admission or rejection of evidence.

167. The improper admission or rejection of evidence shall not be ground of itself for a new trial or reversal of any decision in any case, if it shall appear to the Court before which such objection is raised that, independently of the evidence objected to and admitted, there was sufficient evidence to justify the decision, or that, if the rejected evidence had been received, it ought not to have varied the decision.

THE SCHEDULE.—[Enactments Repealed] Rep by the Repealing Act, 1938 (I of 1938), s. 2 and Sch.

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[1][THE SPECIAL MARRIAGE ACT, 1872.]

CONTENTS.

PREAMBLE

SECTIONS

1. Local extent.
2. Conditions upon which marriages under Act may be celebrated.
3. Appointment of Marriage Registrars.
4. One of the parties to intended marriage to give notice to Registrar.
5. Notice to be filed and copy entered in the Marriage Notice Book.
6. Objection to marriage.
7. Procedure on receipt of objection.
Objector may file suit.
8. Certificate of filing of suit to be lodged with Registrar.
9. Court may fine when objection not reasonable.
10. Declaration by parties and witnesses.
11. Marriage how to be solemnized
12. Place where marriage may be solemnized.
13 Certificate of marriage.
13A Transmission of certified copies of entries in Marriage Certificate Book to the Registrar General of Births, Deaths and Marriages.
14 Fees.
15. Penalty on married person marrying again under Act.
16 Punishment of bigamy.
17. Indian Divorce Act to apply.
18. Law to apply to issue of marriages under Act.
19. Saving of marriages solemnized otherwise than under Act.
20. [*Repealed*]
21. Penalty for signing declarations or certificates containing false statements.

[1] Short title given by the Indian Short Titles Act, 1897 (14 of 1897).

SECTIONS.

22. Effect of certain marriages on coparcenary.
23. Rights of succession in certain cases of marriage under Act.
24. Succession to the property of parties married under Act.
25. Person marrying under Act not to have right of adoption.
26. Adoption by father of person marrying under Act.

FIRST SCHEDULE.—NOTICE OF MARRIAGE.

SECOND SCHEDULE.—DECLARATIONS TO BE MADE BY THE BRIDEGROOM AND BRIDE.

THIRD SCHEDULE.—REGISTRAR'S CERTIFICATE.

FOURTH SCHEDULE.—[*Repealed.*]

ACT No. III of 1872[1].

[*22nd March 1872.*]

An Act to provide a form of Marriage in certain cases.

WHEREAS it is expedient to provide a form of marriage for persons who do not profess the Christian, Jewish, Hindu, Muhammadan, Parsi, Buddhist, Sikh or Jaina religion, [2][and for persons who profess the Hindu, Buddhist, Sikh or Jaina religion] and to legalize certain marriages the validity of which is doubtful; It is hereby enacted as follows:— Preamble.

1. This Act extends[3] to [4][the whole of India ~~(except Part B States)~~.[5] * * * . Local extent.

2. Marriages may be celebrated under this Act between persons neither of whom professes the Christian or the Jewish, or the Hindu or the Muhammadan, or the Parsi or the Buddhist, or the Sikh or the Jaina religion, [6][or between persons each of whom professes one or other of the following religions, that is to say, the Hindu, Buddhist, Sikh or Jaina religion] upon the following conditions:— Conditions upon which marriages under Act may be celebrated.

(1) neither party must, at the time of the marriage, have a husband or wife living:

(2) the man must have completed his age of eighteen years, and the woman her age of ~~fourteen~~ years, according to the Gregorian calendar:

(3) each party must, if he or she has not completed the age of twenty-one years, have obtained the consent of his or her father or guardian to the marriage:

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[1] There was no Statement of Objects and Reasons; the Bill as introduced was published in the Gazette of India, 1868, p. 1403: for the Report of the Select Committee, dated 21st December, 1871, *see ibid.*, 1871, Pt. V. p. 519; for discussions in Council, *see ibid.*, 1868, Supplement, pp. 890 and 1197; *ibid.*, 1871, Extra Supplement, pp. 16 and 42; *ibid*, 1872, Supplement, pp. 2,57,193 and 261.

[2] Ins. by the Special Marriage (Amendment) Act, 1923 (30 of 1923), s. 2.

[3] This Act has been extended to Berar by the Berar Laws Act, 1941 (4 of 1941) and has been declared in force in the Santhal Parganas by the Santhal Parganas Settlement Regulation (3 of 1872), s. 3, in the Khondmals District, by the Khondmals Laws Regulation, 1936 (4 of 1936), s. 3 and Sch., and in the Angul District, by the Angul Laws Regulation, 1936 (5 of 1936), s. 3 and Sch.

It has been declared by notification under s. 3 (*a*) of the Scheduled Distri ts Act, 1874 (14 of 1874), to be in force in the following Schedule Districts, namely:—

the Districts of Hazaribagh, Lohardaga and Manbhum, and Pargana Dhalbhum and the Kolhan in the District of Singhbhum—*see* Gazette of India, 1881, Pt. I, p. 504; [the District of Lohardaga included at this time the present District of Palamau, which was separated in 1894. The District of Lohardaga is now called the Ranchi District;] the North-Western Provinces Tarai—*ibid.*, 1876, Pt. I, p. 505.

[4] Subs. by the A. O. 1950 for "all the Provinces of India" which had been subs. by the A. O. 1948 for the whole of "British India."

[5] The words "and shall come into force on the passing thereof" were rep. by the Repealing Act, 1874 (16 of 1874), s. 1 and Sch. Pt. I.

[6] Ins. by Act 30 of 1923, s. 3.

(4) the parties must not be related to each other in any degree of consanguinity or affinity which would, according to any law to which either of them is subject, render a marriage between them illegal.

1st Proviso.—No such law or custom, other than one relating to consanguinity or affinity, shall prevent them from marrying.

2nd Proviso.—No law or custom as to cansanguinity shall prevent them from marrying, unless a relationship can be traced between the parties through some common ancestor, who stands to each of them in a nearer relationship than that of great-great-grand-father or great-great-grand-mother, or unless one of the parties is the lineal ancestor, or the brother or sister of some lineal ancestor, of the other.

Appointment of Marriage Registrars

3. The [1]State Government] may appoint one or more Registrars under this Act, either by name or as holding any office for the time being, for any portion of the territory subject to its administration. The officer so appointed shall be called "Registrar of Marriages under Act III of 1872," and is hereinafter referred to as "the Registrar." The portion of territory for which any such officer is appointed shall be deemed his district.

One of the parties to intended marriage to give notice to Registrar.

4. When a marriage is intended to be solemnized under this Act, one of the parties must give notice in writing to the Registrar before whom it is to be solemnized.

The Registrar to whom such notice is given must be the Registrar of a district within which one at least of the parties to the marriage has resided for fourteen days before such notice is given.

Such notice may be in the form given in the first schedule to this Act.

Notice to be filed and copy entered in the Marriage Notice Book.

5. The Registrar shall file all such notices and keep them with the records of his office, and shall also forthwith enter a true copy of every such notice in a book to be for that purpose furnished to him by the [2][State Government], to be called the "Marriage Notice Book under Act III of 1872", and such book shall be open at all reasonable times, without fee, to all persons desirous of inspecting the same.

Objection to marriage.

6. Fourteen days after notice of an intended marriage has been given under section 4, such marriage may be solemnized, unless it has been previously objected to in the manner hereinafter mentioned.

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[1] Subs. by the A. O. 1950 for "Provincial Government" which had been subs. by the A. O. 1937 for "L. G."

[2] Subs. by the A. O. 1950 for "Provincial Government" which had been subs by the A. O. 1937 for "Govt."

Any person may object to any such marriage on the ground that it would contravene some one or more of the conditions prescribed in clauses (1), (2), (3) or (4) of section 2.

The nature of the objection made shall be recorded in writing by the Registrar in the register, and shall, if necessary, be read over and explained to the person making the objection, and shall be signed by him or on his behalf.

Procedure on receipt of objection.

7. On receipt of such notice of objection the Registrar shall not proceed to solemnize the marriage until the lapse of fourteen days from the receipt of such objection, if there be a Court of competent jurisdiction open at the time, or, if there be no such Court open at the time, until the lapse of fourteen days from the opening of such Court.

Objector may file suit.

The person objecting to the intended marriage may file a suit in any Civil Court having local jurisdiction (other than a Court of Small Causes) for a declaratory decree, declaring that such marriage would contravene some one or more of the conditions prescribed in clauses (1), (2), (3) or (4) of section 2.

Certificate of filing of suit to be lodged with Registrar.

8. The officer before whom such suit is filed shall thereupon give the person presenting it a certificate to the effect that such suit has been filed. If such certificate be lodged with the Registrar within fourteen days from the receipt of notice of objection, if there be a Court of competent jurisdiction open at the time, or, if there be no such Court open at the time, within fourteen days of the opening of such Court, the marriage shall not be solemnized till the decision of such Court has been given and the period allowed by law for appeals from such decision has elapsed; or, if there be an appeal from such decision, till the decision of the Appellate Court has been given.

If such certificate be not lodged in the manner and within the period prescribed in the last preceding paragraph, or if the decision of the Court be that such marriage would not contravene any one or more of the conditions prescribed in clauses (1), (2), (3) or (4) of section 2, such marriage may be solemnized.

If the decision of such Court be that the marriage in question would contravene any one or more of the conditions prescribed in clauses (1), (2), (3) or (4) of section 2, the marriage shall not be solemnized.

Court may fine when objection not reasonable.

9. Any Court in which any such suit as is referred to in section 7 is filed may, if it shall appear to it that the objection was not reasonable and *bona fide*, inflict a fine, not exceeding one thousand rupees, on the person objecting, and award it, or any part of it, to the parties to the intended marriage.

Declaration by parties and witnesses.

10. Before the marriage is solemnized, the parties and three witnesses shall, in the presence of the Registrar, sign a declaration in the form contained in the second schedule to this Act. If either party has not completed the age of twenty-one years, the declaration shall also be signed by his or her father or guardian, except in the case of a widow, and, in every case, it shall be countersigned by the Registrar

Marriage how to be solemnized.

11. The marriage shall be solemnized in the presence of the Registrar and of the three witnesses who signed the declaration. It may be solemnized in any form, provided that each party says to the other, in the presence and hearing of the Registrar and witnesses, "I [A], take the [B], to be my lawful wife (or husband)."

Place where marriage may be solemnized.

12. The marriage may be celebrated either at the office of the Registrar or at such other place, within reasonable distance of the office of the Registrar, as the parties desire: Provided that the [1][State Government] may prescribe the conditions under which such marriages may be solemnized at places other than the Registrar's office, and the additional fees to be paid thereupon.

Certificate of marriage.

13. When the marriage has been solemnized, the Registrar shall enter a certificate thereof in a book to be kept by him for that purpose and to be called the "Marriage Certificate Book under Act III of 1872," in the form given in the third schedule to this Act, and such certificate shall be signed by the parties to the marriage and the three witnesses.

Transmission of certified copies of entries in marriage-certificate book to the Registrar General of Births, Deaths and Marriages.

[2][**13A.** The Registrar shall send to the Registrar General of Births, Deaths and Marriages for the territories within which his district is situate, at such interval as the [3][State Government] from time to time directs, [4]a true copy certified by him, in such form as the [3][State Government] from time to time prescribes, of all entries made by him in the said marriage-certificate book since the last of snch intervals.[5]]

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[1] Subs. by the A. O. 1950 for "Provincial Government" which had been subs. by the A. O. 1937 for "L. G."

[2] Ins. by the Birth, Deaths and Marriages Registration Act, 1886 (6 or 1886), s. 29.

[3] The original words "G. G. in C" have successively been amended by the Devolution Act, 1920 (38 of 1920), s. 2 and Sch. I, A. O. 1937 and A. O. 1950 to read as above.

[4] For orders issued under this section, see Gazette of India, 1889, Supplement p. 921.

[5] As to duty of the Registrar General to make and keep indexes of the certified copies sent to his office under this section, *see* the Births, Deaths and Marriages Registration Act, 1886 (6 of 1886), s. 7.

14. The [1][State Government] shall prescribe the fees to be paid to the Registrar for the duties to be discharged by him under this Act. Fe

The Registrar may, if he think fit, demand payment of any such fee before the solemnization of the marriage or performance of any other duty in respect of which it is payable.

The said Marriage-Certificate Book shall at all reasonable times be open for inspection, and shall be admissible as evidence of the truth of the statements therein contained. Certified extracts therefrom shall on application be given by the Registrar on the payment to him by the applicant of a fee to be fixed by the [1][State Government] for each such extract.

Penalty on married person marrying again under Act.

15. Every person who, being at the time married, procures a marriage of himself to be solemnized under this Act, shall be deemed to have committed an offence under section 494 or section 495 of the Indian Penal Code, as the case may be; and the marriage so solemnized is void.

XLV of 1860.

Punishment of bigamy.

16. Every person married under this Act who, during the lifetime of his or her wife or husband, contracts any other marriage, shall be subject to the penalties provided in sections 494 and 495 of the Indian Penal Code for the offence of marrying again during the lifetime of a husband or wife, whatever may be the religion which he or she professed at the time of such second marriage.

XLV of 1860.

Indian Divorce Act to apply.

IV of 1869

17. The Indian Divorce Act shall apply to all marriages contracted under this Act, and any such marriage may be declared null or dissolved in the manner therein provided, and for the causes therein mentioned, or on the ground that it contravenes some one or more of the conditions prescribed in clauses (1), (2), (3) or (4) of section 2 of this Act.

Law to apply to issue of marriages under Act.

18. The issue of marriages solemnized under this Act shall, if they marry under this Act, be deemed to be subject to the law to which their fathers were subject as to the prohibition of marriages by reason of consanguinity and affinity, and the provisos to section 2 of this Act shall apply to them.

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[1] Subs. by the A. O. 150 for "Provincial Government" which had been subs. by the A. O. 1937 for "the L. G."

Saving of marriages solemnized otherwise than under Act.

19. Nothing in this Act contained shall affect the validity of any marriage not solemnized under its provisions; nor shall this Act be deemed directly or indirectly to affect the validity of any mode of contracting marriage; but, if the validity of any such mode shall hereafter come into question before any Court, such question shall be decided as if this Act had not been passed.

20. [*Registry of marriages contracted before passing of Act.*] *Rep. by the Repealing Act, 1876* (*XII* of *1876*).

Penalty for signing declarations or certificates containing false statements.

21. Every person making, signing or attesting any declaration or certificate prescribed by this Act, containing a statement which is false, and which he either knows or believes to be false or does not believe to be true, shall be deemed guilty of the offence described in section 199 of the Indian Penal Code. XLV of 1860.

Effect of certain marriages on coparcenary.

[1][**22.** The marriage under this Act of any member of an undivided family who professes the Hindu, Buddhist, Sikh or Jaina religion shall be deemed to effect his severance from such family.

Rights of succession in certain cases of marriage under Act.

23. A person professing the Hindu, Buddhist, Sikh or Jaina religion who marries under this Act shall have the same rights and be subject to the same disabilities in regard to any right of succession to any property as a person to whom the Caste Disabilities Removal Act, 1850 applies: XXI of 1850.

Provided that nothing in this section shall confer on any person any right to any religious office or service, or to the management of any religious or charitable trust.

Succession to the property of parties married under Act.

24. Succession to the property of any person professing the Hindu, Buddhist, Sikh or Jaina religion who marries under this Act, and to the property of the issue of such marriage, shall be regulated by the provisions of the Indian Succession Act, 1865.[2] X of 1865.

Person marrying under Act not to have right of adoption.

25. No person professing the Hindu, Buddhist, Sikh or Jaina religion who marries under this Act shall have any right of adoption.

Adoption by father of person marrying under Act.

26. When a person professing the Hindu, Buddhist, Sikh or Jaina religion marries under this Act, his father shall, if he has no other son living, have the right to adopt another person as a son under the law to which he is subject.]

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[1] Ss. 22 to 26 were added by the Special Marriage (Amendment) Act, 1923 (30 of 1923), s. 4.

[2] *See* now the Indian Succession Act, 1925 (39 of 1925).

FIRST SCHEDULE.

(*See section 4.*)

NOTICE OF MARRIAGE.

To a Registrar of Marriages under Act III of 1872 for the District.

I hereby give you notice that a marriage under Act III of 1872 is intended to be had, within three calendar months from the date hereof, between me and the other party herein named and described (that is to say):—

Names.	Condition.	Rank or profession.	Age.	Dwelling. place.	Length of Residence.
A B	Unmarried. Widower.	Landowner.	Of full age.	....	23 days.
C D	Spinster.	....	Minor.	....	....

Witness my hand, this day of

187

(*Signed*) *A. B.*

SECOND SCHEDULE.

(*See section 10.*)

DECLARATION TO BE MADE BY THE BRIDEGROOM.

I, *A B*, hereby declare as follows:—

1. I am at the present time unmarried:

2. I do not profess the Christian, Jewish, Hindu, Muhammadan, Parsi, Buddhist, Sikh or Jaina religion: [1][or (as the case may be) I profess the Hindu, or the Buddhist, or the Sikh, or the Jaina religion.]

3. I have completed my age of eighteen years:

4. I am not related to *C D* [*the bride*] in any degree of consanguinity or affinity which would, according to the law to which I am subject, or to which the said *C D* is subject, and subject to the provisos of clause (4) of section 2 of Act III of 1872, render a marriage between us illegal:

[*And when the bridegroom has not completed his age of twenty-one years*:

5. The consent of my father [*or* guardian, *as the case may be*] has been given to a marriage between myself and *C D*, and has not been revoked:]

6. I am aware that, if any statement in this declaration is false, and if in making such statement I either know or believe it to be false, or do not believe it to be true, I am liable to imprisonment, and also to fine.

(*Signed*) *A B* [*the bridegroom*].

DECLARATION TO BE MADE BY THE BRIDE.

I, *C. D*, hereby declare as follows:—

1. I am at the present time unmarried.

2. I do not profess the Christian, Jewish, Hindu, Muhammadan, Parsi, Buddhist, Sikh or Jaina religion: [1][or (as the case may be) I profess the Hindu, or the Buddhist, or the Sikh, or the Jaina religion.]

3. I have completed my age of ~~fourteen~~ years:

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[1] Ins. by the Special Marriage (Amendment) Act, 1923 (30 of 1923), s. 5.

4. I am not related to *A B* [*the bridegroom*] in any degree of consanguinity or affinity which would, according to the law to which I am subject, or to which the said *A B* is subject, and subject to the provisos of clause (4) of section 2 of Act III of 1872, render a marriage between us illegal:

[*and when the bride has not completed her age of twenty-one years, unless she is a widow*:

5. The consent of *M N*, my father [*or* guardian, *as the case may be*] has been given to a marriage between myself and *A B* and has not been revoked:]

6. I am aware that, if any statement in this declaration is false, and if in making such statement, I either know or believe it to be false, or do not believe it to be true, I am liable to imprisonment, and also to fine.

(*Signed*) *C D* [*the bride*].

Signed in our presence by the above-named *A B* and *C D*:

G H,
I J, } [*three witnesses*].
K L,

[*And when the bridegroom or bride has not completed the age of twenty-one years, except in the case of a widow*]

Signed in my presence and with my consent by the above-named *A B* and *C D*:

M. N., the father [*or* guardian]
of the above-named *A B* (*or C D, as the case may be*).]

(*Countersigned*) *E F*,

Registrar of Marriages under Act III of 1872 for the District of

Dated the *day of* *18*

THIRD SCHEDULE.

(*See section 13.*)

REGISTRAR'S CERTIFICATE.

I, *E F*, certify that, on the of 18 appeared before me *A B* and *C D*, each of whom in my presence and in the presence of three credible witnesses, whose names are signed hereunder, made the declarations required by Act III of 1872, and that a marriage under the said Act was solemnized between them in my presence.

(*Signed*) *E F*,

Registrar of Marriages under Act III of 1872 for the District of

(*Signed*) *A B*,

C D.

G H.
I. J. } [*three witnesses*]
K. L.

Dated the day of 18

FOURTH SCHEDULE.

[*Rep. by the Repealing Act, 1876 (XII of 1876).*]

THE PUNJAB LAWS ACT, 1872.

CONTENTS.

PREAMBLE.

SECTIONS.

1. Short title.

2. Local extent.
Commencement.

3. Enactments in force.

4. [*Repealed.*]

Civil Judicature.

5. Decisions in certain cases to be according to Native law.

6. Decisions in cases not specially provided for.

7. Local customs and mercantile usages when valid.

8, 8A, 8B, 8C. [*Repealed.*]

Pre-emption.

9 to 20. [*Repealed.*]

Decrees concerning Land.

21. [*Repealed.*]

Insolvency.

22 to 33. [*Repealed.*]

Minors and the Court of Wards.

34 to 38. [*Repealed.*]

Criminal Judicature.

39. Indian Penal Code to apply to offences committed previous to 1st January 1862.

Saving of privileges conferred on certain Chiefs.

39A. Power to establish a system of village-watchmen and municipal watchmen, and to make rules.

39B. Obligation to assist watchmen and headmen.
Person obstructing watchman or headman may be arrested without warrant.

SECTIONS.

39C. Power to direct local taxation for payment of police enrolled under Act V of 1861.
39D. Notice of taxes proposed to be levied; objections to taxation; procedure thereon.
39E. Power to fix rates of tax.
39F. Power to make rules for collection of taxes.
39G. [*Repealed.*]

Honorary Police-Officers.

40. State Government may confer powers of police-officer.

Track Law.

41. Trackers may call for assistance in carrying on tracks.
42. Penalty for withholding assistance or conniving at offence or escape. Limit to fine.
Appeal to High Court.
Fine may be awarded to injured parties, and fee to tracker.

Slaughter of Kine.

43. Control of slaughter of kine and sale of beef.

Armed Men and Foreign Vagrants.

44. Control of entry into towns of bands of armed men.
45. Powers of Magistrate of District as to foreign vagrants.
46. Surveillance, etc. of band failing to comply with Magistrate's order.

Miscellaneous.

47. Crossing of streams on buoys or skins.
48. Use of pasturage or natural product of Government land.
49. [*Repealed.*]
50. Power to make rules as to matters mentioned in sections 43 to 48: existing rules.
50A. Conditions of validity of rules hereafter made under this Act.
50B. Penalties for breach of such rules.
51. Republication of rules and orders.
52. [*Repealed.*]

SCHEDULE I.—ENACTMENTS DECLARED TO BE IN FORCE.
SCHEDULE II.—[*Repealed.*]

(*Civil Judicature.*)

ACT No. IV of 1872.

[*28th March 1872.*]

An Act for declaring which of certain rules, laws and regulations have the force of law in the Punjab and for other purposes.

Preamble.

WHEREAS certain rules, laws and regulations, made heretofore for the Punjab, acquired the force of law under the provisions of section 25 of the [1]Indian Councils Act, 1861; and whereas it is expedient to declare which of the said rules, laws and regulations shall henceforth be in force in the Punjab, and to amend, consolidate or repeal others of the said rules, orders and regulations; It is hereby enacted as follows:—

24 & 25 Vict., c. 67.

Short title.

1. This Act may be called the Punjab Laws Act, 1872.

Local extent.

Commencement.

2. It extends to the territories [2][constituting the [3][States of Punjab], and Delhi], but not so as to alter the effect of any regulations made for any parts of the said territories under the [1] Statute 33 Vict, ch. 3, section 1; and it shall come into force on the first day of June, 1872.

Enactments in force.

3. The Regulations, Acts and orders specified in the First Schedule hereto annexed are in force in the [4][[3][States of Punjab] and Delhi] to the extent specified in the third column of the said Schedule.

4. [*Enactments repealed.*] *Rep. by the Second Repealing and Amending Act, 1914 (XVII of 1914), s. 3 and Sch. II.*

Civil Judicature.

Decisions in certain cases to be according to Native law.

[5][**5.** In questions regarding succession, special property of females, betrothal, marriage, divorce, dower, adoption, guardianship, minority, bastardy, family relations, wills, legacies, gifts, partitions, or any religious usage or institution, the rule of decision shall be—

(*a*) Any custom applicable to the parties concerned, which is not contrary to justice, equity or good conscience, and has not been by this or any other enactment altered or abolished, and has not been declared to be void by any competent authority;

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[1] Repealed by the Government of India Act.

[2] Subs. by the A. O. 1948 for "now under the administration of the Lieutenant Governor of the Punjab".

[3] Subs. by the A. O. 1950 for "Provinces of East Punjab".

[4] Subs. by the A. O. 1948 for "Punjab".

[5] Subs. for the original s. 5 by the Punjab Laws (Amendment) Act, 1878 (12 of 1878), s. 1. The provisions of this section have been rep. in so far as they are inconsistent with those of the Muslim Personal Law (*Shariat*) Application Act, 1937 (26 of 1937): *see ibid.*, s. 6.

(*b*) the Muhammadan law, in cases where the parties are Muhammadans, and the Hindu law, in cases where the parties are Hindus, except in so far as such law has been altered or abolished by legislative enactment, or is opposed to the provisions of this Act, or has been modified by any such custom as is above referred to.]

Decisions in cases not specially provided for.

6. In cases not otherwise specially provided for, the Judges shall decide according to justice, equity and good conscience.

Local customs and mercantile usages when valid.

7. All local customs and mercantile usages shall be regarded as valid, unless they are contrary to justice, equity or good conscience, or have, before the passing of this Act, been declared to be void by any competent authority.

Descent of Jaghirs.

8, 8A to 8C. [*Repealed.*][1]

Pre-emption.

9 to **20.** *Rep. by the Punjab Pre-emption Act, 1905 (Punjab Act II of 1905), s. 2(1).*

Decrees concerning Land.

21. [*Copy of decrees affecting land to be forwarded to Deputy Commissioner.*] *Rep. by the Punjab Land Revenue Act, 1887 (XVII of* 1887).

Insolvency.

22 to **32.** *Rep. by the Provincial Insolvency Act, 1907 (III of 1907).*

33. [*Saving of previous insolvency proceedings.*] *Rep. by the Amending Act, 1891 (XII of 1891).*

Minors and the Court of Wards.

34 to **38.** *Rep. by the Punjab Court of Wards Act, 1903 (Punjab Act II of 1903), s. 2(1).*

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[1] Ss. 8, 8A, 8B and 8C, which had been subs. for s. 8 by the Punjab Descent of Jaghirs Act, 1900 (Pun. 4 of 1900), s. 2, and the heading "Descent of Jaghirs were rep. by the Punjab Jagirs Act, 1941 (Pun. 5 of 1941), s. 13.

XLV of 1860.

39. The provisions of the Indian Penal Code, with the exception of Chapter VI, shall be applicable to all offences committed before first January, 1862, in territory which was, at the time of the commission of such offence, subject to [1][the State Government] of the Punjab:

Indian Penal Code to apply to offences committed previous to 1st January, 1862.

Provided that nothing contained in this section shall affect any privilege conferred on certain Chiefs in the Punjab by the [2][Central Government], or by the Board of Administration for the affairs of the Punjab, nor any indemnity or pardon granted by competent authority.

Saving of privileges conferred on certain Chiefs.

[3][**39A.** [4][The State Government] may establish a system of village-watchmen or municipal watchmen in any part of the territories under its administration, and in furtherance of this object may, from time to time, make rules to provide for the following matters:—

Power to establish a system of village-watchmen and municipal watchmen, and to make rules

(*a*) the definition of the limits of watchmen's beats;

(*b*) the determination of the several grades of watchmen, and the number of each grade to be appointed to each beat;

(*c*) the appointment, suspension, dismissal and resignation of watchmen of each grade;

(*d*) the equipment and discipline of, and the control and supervision over, such watchmen;

(*e*) the conferring upon them, and the exercise by them, of any powers and the enjoyment by them of any protection or privilege, which may be exercised and enjoyed by a police-officer under any law for the time being in force;

(*f*) the performance by them of such duties relating to police, sanitation or statistics, or for the benefit of the village communities or municipalities within their respective beats, as [4][the State Government] thinks fit;

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[1] Subs. by the A. O. 1950 for "the Provincial Government" which had been subs. by the A. O. 1937 for "the Govt.".

[2] Subs. by the A. O. 1937 for "G. G. in C."

[3] Ss. 39A and 39B were subs. by the Punjab Laws (Amendment) Act, 1881 (24 of 1881), s. 2, for ss. 39A and 39B which had been ins. by the Punjab Laws Amendment Act, 1875 (15 of 1875), s. 2.

[4] Subs. by the A. O. 1950 for "the Provincial Government" which had been subs. by the A. O. 1937 for "The L. G.".

(*g*) the exercise of authority over, and the rendering of aid to, such watchmen by headmen of the villages or members of the Municipal Committees of the towns comprised in their respective beats;

(*h*) the performance, by the headmen of villages comprised in the beat of any watchmen, of any of the duties of a village-watchman in aid of, or substitution for, such watchman;

(*i*) the exercise, by such village-headmen for the purposes referred to in clauses (*g*) and (*h*), or by members of Municipal Committees for the purposes referred to in clause (*g*) of this section, of any of the powers, and the enjoyment by such headmen or members of any privilege or protection, of a village-watchman, or a municipal watchman, as the case may be;

(*j*) the determination of the rate at which, and the mode in which, watchmen shall be paid, and, in the case of village watchmen, of the mode in which their pay, the expenses of their equipment, and other charges connected with the village-watchman-system shall be provided for, whether out of cesses or funds already leviable or available in the villages comprised in the beat, or by a special tax in money or kind to be imposed on any class of persons residing or owning property in, or resorting to, such villages or partly in one of these ways and partly in the other;

(*k*) the collection with or without the aid of the village-headmen, and by any process available for the realisation of the land-revenue, of any tax imposed under clause (*j*) of this section, and the application of, and the mode of accounting for, the same; and generally for

(*l*) the efficient working of the system of village-watchmen or municipal watchmen:

Provided—

first, that the rules to be made regarding the appointment of village-watchmen shall allow to the headmen of the villages comprised in the beat to which such a watchman is to be appointed a power of nomination, to be exercised in such a manner and subject to such reasonable conditions as may be prescribed by such rules;

secondly, that the rules to be made under clause (*J*) of this section with regard to village-watchmen shall include provisions for recording and securing due consideration of the views and opinions on the matters therein referred to of the headmen of the villages comprised in each beat.

Obligation to assist watchmen and headmen.

39B. Every person is bound to render to a village-watchman, or municipal watchman, or village-headman discharging the duties of a Police-officer under the rules made hereunder, all the assistance which he is bound to render to a Police-officer.

Person obstructing watchman or headman may be arrested without warrant.

Any person who obstructs such watchman or headman in the discharge of such duties may be arrested without warrant by a Police-officer or by any watchman or village-headman empowered in this behalf by [1][the State Government].

Power to direct local taxation for payment of police enrolled under Act V of 1861.

[2]**[39C.** Whenever it seems to [1][the State Government] expedient that the duties of watch-and-ward and other internal police-service of any town or village not comprised within the limits of a municipality or within the limits of a village-watchman's beat as defined under the power conferred by section 39A should be performed by Police-officers enrolled under [3]Act V of 1861, [1][the State Government] may direct that the said service shall be so performed, and may also [4]* * * direct that the charges for the time being fixed by such Government on account of such service shall be defrayed by taxes to be levied in such town or village.

Notice of taxes proposed to be levied.

39D. When [1][the State Government] has, under section 39C, directed that taxes shall be levied in any town or village, the Deputy Commissioner may from time to time issue a public notice in such town or village explaining the nature of the taxes he proposes to levy.

Objections to taxation.

Any inhabitant of such town or village objecting to the taxation thus proposed may, within fifteen days from the publication of such notice, send his objection in writing to the Deputy Commissioner.

Procedure thereon.

After the expiry of fifteen days from the publication of the notice, the Deputy Commissioner may submit for the information of [1][the State Government] a report of the proposal made by him. Such report shall contain

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[1] Subs. by the A. O. 1950 for "the Provincial Government" which had been subs. by the A. O. 1937 for "the L. G."

[2] Ss. 39C to 39G were ins. by the Punjab Laws Amendment Act, 1875 (15 of 1875), s. 2.

[3] The Police Act.

[4] The words "subject to the control of the G. G. in C." rep. by the A. O. 1937.

specific mention of the objections (if any) urged to his proposal and his opinion on such objections.

No such tax shall be levied until it has, upon such report, been approved by [1][the State Government].

Power to fix rates of tax.

39E. When any such tax has been so approved by [1][the State Government], the Deputy Commissioner may from time to time, subject to such rules consistent with this Act as [1][the State Government] may from time to time prescribe, determine the rates at which it is to be levied.

Power to make rules for collection of taxes.

39F. [1][The State Government] may from time to time make rules to provide for the collection of such taxes by any process available for the realisation of the land-revenue and to regulate the application and mode of accounting for the same.

39G. [*Validation clause*]. *Rep. by the Amending Act, 1891 (XII of 1891).*]

Honorarry Police-officers.

State Government may confer powers of Police officer.

40. [1][The State Government] may, if it thinks fit, confer on any person any of the powers which may be exercised by a Police-officer under any Act for the time being in force, [2][and may withdraw any powers so conferred.]

Track Law.

Trackers may call for assistance in carrying on tracks.

41. When an offence is, has been, or may reasonably be supposed to have been committed, and the tracks of the persons who may reasonably be supposed to have committed such offence, or of any animal or other property reasonably supposed to be connected with such offence, are followed to a spot within the immediate vicinity of a village, the person following such tracks may call upon any headman or village-watchman in such village to assist in carrying on the tracks.

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[1] Subs. by the A. O. 1950 for "the Provincial Government" which had been subs. by the A. O. 1937 for "the L. G.".

[2] Ins. by the Punjab Laws (Amendment) Act, 1878 (12 of 1878), s. 5.

42. If such headman or watchman do not forthwith give such assistance, or if the inhabitants of such village do not afford full opportunity for search in their houses for the offenders, or, if from the circumstances of the case, there shall appear good reason to believe that the inhabitants of such village, or any of them were conniving at the offence or at the escape of the offenders, and such offenders cannot be traced beyond the village, the Magistrate of the District may, with the previous sanction of the Commissioner of the Division inflict a fine upon such village not exceeding five hundred rupees, except in the case of stolen property over five hundred rupees in value, in which case the fine shall not exceed the value of such property.

Penalty for withholding assistance or conniving at offence or escape.

Limit to fine.

An appeal against all convictions under this section shall lie to the [1] [High Court of Punjab].

Appeal to High Court.

The Magistrate may direct that the fine imposed under this section or any part thereof shall be awarded to any persons injured by such offence in compensation for such injury; and, in the case of stolen property recovered through the agency of a tracker, may direct that such property be not restored to its owner until he has paid to such tracker such fee, not exceeding one-fourth part of the value of the stolen property, as the said Magistrate seems fit.

Fine may be awarded to injured parties, and fee to tracker.

Slaughter of Kine.

43. The slaughter of kine and the sale of beef shall not take place except [2]* * * subject to rules to be from time to time, either generally or in any particular instance, prescribed by [3][the State Government].

Control of slaughter of kine and sale of beef.

Armed men and Foreign Vagrants.

44. No band of armed men shall enter into any city or town, except [2]* * * subject to rules to be from time to time, either generally or in any particular instance, prescribed by [3][the State Government].

Control of entry into towns of bands of armed men

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[1] Subs. by the A. O. 1950 for "High Court of East Punjab" which had been subs. by the A. O. 1948 for "Chief Court".

[2] The words "with the consent and" rep. by the Punjab Laws (Amendment) Act, 1878 (12 of 1878), s. 6.

[3] Subs. by the A. O. 1950 for "the Provincial Government" which had been subs. by the A. O. 1937 for "the L. G.".

(*Armed Men and Foreign Vagrants. Miscellaneous.*)

Powers of Magistrate of District as to foreign vagrants.

45. The Magistrate of the District may, if he considers that any band of foreign vagrants is likely to occasion a breach of the peace or to commit any offence under the Indian Penal Code, prohibit such band from entering his district; or, if they are already in his district, may require them within a given time to leave it. XLV of 1860.

Surveillance, etc., of band failing to comply with Magistrate's order.

46. If any such band fail to comply with the orders of the said Magistrate within the prescribed period, he shall report the matter to [1][the State Government], and [1][the State Government] may give such directions for the surveillance, control or deportation of such band as to it seems fit.

Miscellaneous.

Crossing of streams on buoys or skins.

47. No person shall cross any river or stream on a buoy or inflated skin, nor shall have in his possession or custody any buoy or skin for the purpose of being used in crossing any river or stream, except [2]* * * subject to rules to be from time to time, either generally or in any particular instance, prescribed by [1][the State Government].

Use of pasturage or natural product of Government land.

48. No person shall make use of the pasturage or other natural product of any land being the property of [3][the Government], except with the consent and subject to rules to be from time to time, either generally or in any particular instance, prescribed by [4][the Government concerned].

49. [*Growing, selling or keeping opium.*] *Rep. by the Opium Act, 1878 (1 of 1878), s. 2 and Sch.*

Power to make rules as to matters mentioned in sections 43 to 48.

[5]**[50.** [1][The State Government] may from time to time make rules as to the matters mentioned in [6][sections 43 to 48] inclusive.

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[1] Subs. by the A. O. 1950 for "the Provincial Government" which had been subs. by the A. O. 1937 for "the L. G.".

[2] The words "with the consent and" rep. by the Punjab Laws (Amendment) Act, 1878 (12 of 1878), s. 6.

[3] Subs. by the A. O. 1950 for "the crown" which had been subs. by the A. O. 1937 for "the Govt.".

[4] Subs. by the A. O. 1950 for "the Govt. for whose purposes the land is vested in His Majesty" which had been subs. by the A. O. 1937 for "the L. G.".

[5] Ss. 50, 50A and 50B were subs. by the Punjab Laws Amendment Act, 1875 (15 of 1875), s. 3, for the original s. 50.

[6] Subs. by the Amending Act, 1891 (12 of 1891), s. 2 and Sch. II, for "sections forty-three to forty-nine".

All existing rules upon such matters, which might have been made under this section had it been in force, shall be deemed to have been made hereunder. **Existing rules.**

50A. [1][Rules made under this Act shall not be valid unless] :— **Conditions of validity of rules hereafter made under this Act.**

(*a*) they are consistent with the laws for the time being in force in the [2][States of Punjab and Delhi] ;

(*b*) they are published in the Official Gazette;

[3]* * * * *

50B. [4][The State Government] may, in making any rule under any of the powers conferred by this Act, attach to the breach of it, in addition to any other consequences that would ensue from such breach, a punishment on conviction before a Magistrate not exceeding six months' imprisonment, or three hundred rupees fine, or both]. **Penalties for breach of such rules.**

[5][**51.** All rules which [4][the State Government] is empowered to issue under this Act, and all circulars issued by the [6][High Court of Punjab], shall be republished from time to time by [4][the State Government], and upon such republication, shall be arranged in the order of their subject-matter, and all such alterations or amendments as may have been made since the last preceding publication thereof, or may have become necessary or advisable, shall be embodied therewith, and upon such republication all such rules and circulars previously issued shall be repealed.] **Republication of rules and orders.**

52. [*Recovery of advances made by Government.*] *Rep. by the Northern India Takkavi Act, 1879 (X of 1879).*

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[1] Subs. by the A. O. 1937 for "All rules hereafter made by the L. G. under any power conferred by this Act shall be subject to the control of the G. G. in C. and no such rules shall be valid unless. The words "All" and "subject to the control of the G. G. in C. and no such rules shall be valid" were subs. by the Decentralization Act, 1914 (4 of 1914), for "No" and "valid", respectively.

[2] Subs. by the A. O. 1950 for "Provinces of East Punjab and Delhi" which had been subs. by the A. O. 1948 for "Punjab".

[3] Cl. (*c*) of s. 50A rep. by the Decentralization Act, 1914 (4 of 1914).

[4] Subs. by the A. O. 1950 for "the Provincial Government" which had been subs. by the A. O. 1937 for "the L. G.".

[5] Subs. by the Punjab Laws (Amendment) Act, 1910 (Punjab 1 of 1910), for the original s. 51.

[6] Subs. by the A. O. 1950 for "High Court of East Punjab" which had been subs. by the A. O. 1948 for "Chief Court".

(*Schedules.*)

[1]SCHEDULE I.

ENACTMENTS DECLARED TO BE IN FORCE.

Explanation.—This schedule does not refer to any Act which is in its terms applicable to the Punjab, or which has been extended to the Punjab by competent authority.

No. and year.	Title.	Extent to which the enactment is in force.
[2] Reg. I of 1798 .	A Regulation to prevent Fraud and Injustice in Conditional Sales of Land under Deeds of bai-bil-wuffa, or other Deeds of the same nature.	The whole, except such parts as relate to interest.
[3] * * * *	* * * * *	* * *
[2] Reg. XVII of 1806.	A Regulation for extending to the [4][State] of Benares the Rates of Interest on future Loans and Provisions relative thereto, contained in Regulation XV, 1793; also for a general extension of the period fixed by Regulations I, 1798, and XXXIV, 1803, for the redemption of Mortgages and Conditional Sales of Land, under Deeds of bai-bil wuffa Kutcubaleb, or other similar designation.	Sections 7 and 8.
Reg. III of 1818 .	A Regulation for the Confinement of State Prisoners.	The whole.
Reg. XI of 1825 .	A Regulation for declaring the Rules to be observed in determining Claims to Lands gained by alluvion or by dereliction of a river or the sea.	The whole
* * *	* * * * *	* * *
...,	Rules for the conservancy of Forests and Jungles in the Hill Districts of the Punjab Territories, sanctioned by the Governor General in Council in letter of the Secretary to the Government of India, No. 1789, 21st May 1855.	The whole.

SCHEDULE II.

[ENACTMENTS REPEALED.]

Rep. by the Second Repealing and Amending Act, 1914 (XVII of 1914).

[1] As so much of Act 4 of 1872 as related to Bengal Regulations 5 of 1817 and 20 of 1825 and Acts 40 of 1858 and 17 of 1861 was repealed by Acts 6 of 1878, 10 of 1882, 8 of 1890 and 12 of 1891, respectively, the references to those Regulations and Acts in this Schedule are omitted.

[2] *See* the Transfer of Property Act, 1882 (4 of 1882), ss. 1, 2 and Sch.

[3] So much of the First Schedule as relates to Bengal State Offences Regulation, 1804 (10 of 1804), was repealed by Act 4 of 1922.

[4] Subs. by the A. O. 1950, for "Province."

THE INDIAN CONTRACT ACT, 1872.

CONTENTS.

PREAMBLE.

PRELIMINARY.

SECTIONS.

1. Short title.
   Extent.
   Commencement.

2. Interpretation-clause.

CHAPTER I.

OF THE COMMUNICATION, ACCEPTANCE AND REVOCATION OF PROPOSALS.

3. Communication, acceptance and revocation of proposals.

4. Communication when complete.

5. Revocation of proposals and acceptances.

6. Revocation how made.

7. Acceptance must be absolute.

8. Acceptance by performing conditions, or receiving consideration.

9. Promises, express and implied.

CHAPTER II.

OF CONTRACTS, VOIDABLE CONTRACTS AND VOID AGREEMENTS.

10. What agreements are contracts.

11. Who are competent to contract.

12. What is a sound mind for the purposes of contracting.

13. "Consent" defined.

14. "Free consent" defined.

15. "Coercion" defined.

SECTIONS.

16. "Undue influence" defined.

17. "Fraud" defined.

18. "Misrepresentation" defined.

19. Voidability of agreements without free consent.

19A. Power to set aside contract induced by undue influence.

20. Agreement void where both parties are under mistake as to matter of fact.

21. Effect of mistakes as to law.

22. Contract caused by mistake of one party as to matter of fact.

23. What considerations and objects are lawful, and what not.

Void Agreements.

24. Agreements void, if considerations and objects unlawful in part.

25. Agreement without consideration void, unless—it is in writing and registered,
or is a promise to compensate for something done,
or is a promise to pay a debt barred by limitation law.

26. Agreement in restraint of marriage void.

27. Agreement in restraint of trade void.
Saving of agreement not to carry on business of which good-will is sold.

28. Agreements in restraint of legal proceedings void.
Saving of contract to refer to arbitration dispute that may arise.
Suits barred by such contracts.
Saving of contract to refer questions that have already arisen.

29. Agreements void for uncertainty.

30. Agreements by way of wager void.
Exception in favour of certain prizes for horse-racing.
Section 294A of the Indian Penal Code not affected.

CHAPTER III.

Of Contingent Contracts

Sections.

31. "Contingent contract" defined.
32. Enforcement of contracts contingent on an event happening.
33. Enforcement of contracts onctingent on an event not happening.
34. When event on which contract is contingent to be deemed impossible, if it is the future conduct of a living person.
35. When contracts become void which are contingent on happening of specified event within fixed time.
When contracts may be enforced which are contingent on specified event not happening within fixed time.
36. Agreement contingent on impossible events void.

CHAPTER IV.

Of the Performance of Contracts.

Contracts which must be performed.

37. Obligation of parties to contracts.
38. Effect of refusal to accept offer of performance.
39. Effect of refusal of party to perform promise wholly.

By whom Contracts must be performed.

40. Person by whom promise is to be performed.
41. Effect of accepting performance from third person.
42. Devolution of joint liabilities.
43. Any one of joint promisors may be compelled to perform.
Each promisor may compel contribution.
Sharing of loss by default in contribution.
44. Effect of release of one joint promisor.
45. Devolution of joint rights.

Time and Place for Performance.

46. Time for performance of promise where no application is to be made and no time is specified.

SECTIONS.

47. Time and place for performance of promise where time is specified and no application to be made.

48. Application for performance on certain day to be at proper time and place.

49. Place for performance of promise where no application to be made and no place fixed for performance.

50. Performance in manner or at time prescribed or sanctioned by promisee.

Performance of Reciprocal Promises.

51. Promisor not bound to perform, unless reciprocal promisee ready and willing to perform.

52. Order of performance of reciprocal promises.

53. Liability of party preventing event on which contract is to take effect.

54. Effect of default as to that promise which should be first performed, in contract, consisting of reciprocal promises.

55. Effect of failure to perform at fixed time in contract in which time is essential.
Effect of such failure when time is not essential.
Effect of acceptance of performance at time other than that agreed upon.

56. Agreement to do impossible act.
Contract to do act afterwards becoming impossible or unlawful.
Compensation for loss through non-performance of act known to be impossible or unlawful.

57. Reciprocal promise to do things legal, and also other things illegal

58. Alternative promise, one branch being illegal

Appropriation of Payments.

59. Application of payment where debt to be discharged is indicated.

60. Application of payment where debt to be discharged is not indicated.

61. Application of payment where neither party appropriates.

Contracts which need not be performed.

SECTIONS.

62. Effect of novation, rescission, and alteration of contract.

63. Promisee may dispense with or remit performance of promise.

64. Consequences of rescission of voidable contract.

65. Obligation of person who has received advantage under void agreement or contract that becomes void.

66. Mode of communicating or revoking rescission of voidable contract.

67. Effect of neglect of promisee to afford promisor reasonable facilities for performance.

CHAPTER V.

OF CERTAIN RELATIONS RESEMBLING THOSE CREATED BY CONTRACT.

68. Claim for necessaries supplied to person incapable of contracting, or on his account.

69. Reimbursement of person paying money due by another, in payment of which he is interested.

70. Obligation of person enjoying benefit of non-gratuitous act.

71. Responsibility of finder of goods.

72. Liability of person to whom money is paid or thing delivered by mistake or under coercion.

CHAPTER VI.

OF THE CONSEQUENCES OF BREACH OF CONTRACT.

73. Compensation for loss or damage caused by breach of contract. Compensation for failure to discharge obligation resembling those created by contract.

74. Compensation for breach of contract where penalty stipulated for.

75. Party rightfully rescinding contract entitled to compensation.

CHAPTER VII.

SALE OF GOODS.

SECTIONS.

76 to 123. [*Repealed.*]

CHAPTER VIII.

OF INDEMNITY AND GUARANTEE.

124. "Contract of indemnity" defined.
125. Rights of indemnity-holder when sued.
126. "Contract of guarantee," "surety," "principal debtor," and "creditor."
127. Consideration for guarantee.
128. Surety's liability
129. "Continuing guarantee."
130. Revocation of continuing guarantee.
131. Revocation of continuing guarantee by surety's death.
132. Liability of two persons, primarily liable, not affected by arrangement between them that one shall be surety on other's default.
133. Discharge of surety by variance in terms of contract.
134. Discharge of surety by release or discharge of principal debtor.
135. Discharge of surety when creditor compounds with, gives time to, or agrees not to sue, principal debtor.
136. Surety not discharged when agreement made with third person to give time to principal debtor.
137. Creditor's forbearance to sue does not discharge surety.
138. Release of one co-surety does not discharge others.
139. Discharge of surety by creditor's act or omission impairing surety's eventual remedy.
140. Rights of surety on payment or performance.
141. Surety's right to benefit of creditor's securities.
142. Guarantee obtained by misrepresentation invalid.
143. Guarantee obtained by concealment invalid.

SECTIONS.

144. Guarantee on contract that creditor shall not act on it until co-surety joins.
145. Implied promise to indemnify surety.
146. Co-sureties liable to contribute equally.
147. Liability of co-sureties bound in different sums.

CHAPTER IX

OF BAILMENT.

148. "Bailment," "bailor" and "bailee" defined.
149. Delivery to bailee how made.
150. Bailor's duty to disclose faults in goods bailed.
151. Care to be taken by bailee.
152. Bailee when not liable for loss, etc., of thing bailed.
153. Termination of bailment by bailee's act inconsistent with conditions.
154. Liability of bailee making unauthorized use of goods bailed.
155. Effect of mixture, with bailor's consent, of his goods with bailee's.
156. Effect of mixture, without bailor's consent, when the goods can be separated.
157. Effect of mixture, without bailor's consent, when the goods can not be separated
158. Repayment, by bailor, of necessary expenses.
159. Restoration of goods lent gratuitously.
160. Return of goods bailed, on expiration of time or accomplishment of purpose.
161. Bailee's responsibility when goods are not duly returned.
162. Termination of gratuitous bailment by death
163. Bailor entitled to increase or profit from goods bailed
164. Bailor's responsibility to bailee.
165. Bailment by several joint owners.
166. Bailee not responsible on re-delivery to bailor without title.

SECTIONS.

167. Right of third person claiming goods bailed.

168. Right of finder of goods;
may sue for specific reward offered.

169. When finder of thing commonly on sale may sell it.

170. Bailee's particular lien.

171. General lien of bankers, factors, wharfingers, attorneys and policy-brokers.

Bailments of Pledges.

172. "Pledge," "pawnor" and "pawnee" defined.

173. Pawnee's right of retainer.

174. Pawnee not to retain for debt or promise other than that for which goods pledged.
Presumption in case of subsequent advances.

175. Pawnee's right as to extraordinary expenses incurred.

176. Pawnee's right where pawnor makes default.

177. Defaulting pawnor's right to redeem.

178. Pledge by mercantile agent.

178A. Pledge by person in possession under voidable contract.

179. Pledge where pawnor has only a limited interest.

Suits by Bailees or Bailors against Wrong-doers.

180. Suit by bailor or bailee against wrong-doer.

181. Apportionment of relief or compensation obtained by such suits.

CHAPTER X

AGENCY.

Appointment and Authority of Agents.

182. "Agent" and "principal" defined.

183. Who may employ agent.

184. Who may be an agent.

185. Consideration not necessary.

186. Agent's authority may be expressed or implied.

SECTIONS.

187. Definitions of express and implied authority.

188. Extent of agent's authority.

189. Agent's authority in an emergency.

Sub-agents.

190. When agent cannot delegate.

191. "Sub-agent" defined.

192. Representation of principal by sub-agent properly appointed.
Agent's responsibility for sub-agent.
Sub-Agent's responsibility.

193. Agent's responsibility for sub-agent appointed without authority.

194. Relation between principal and person duly appointed by agent to act in business of agency.

195. Agent's duty in naming such person.

Ratification.

196. Right of person as to acts done for him without his authority.
Effect of ratification.

197. Ratification may be expressed or implied.

198. Knowledge requisite for valid ratification.

199. Effect of ratifying unauthorized act forming part of a transaction.

200. Ratification of unauthorized act cannot injure third person

Revocation of Authority.

201. Termination of agency.

202. Termination of agency where agent has an interest in subject-matter.

203. When principal may revoke agent's authority.

204. Revocation where authority has been partly exercised.

205. Compensation for revocation by principal, or renunciation by agent.

206. Notice of revocation or renunciation.

SECTIONS.

207. Revocation and renunciation may be expressed or implied.

208. When termination of agent's authority takes effect as to agent, and as to third persons.

209. Agent's duty on termination of agency by principal's death or insanity.

210. Termination of sub-agent's authority.

Agent's duty to Principal.

211. Agent's duty in conducting principal's business.

212. Skill and diligence required from agent.

213. Agent's accounts.

214. Agent's duty to communicate with principal.

215. Right of principal when agent deals, on his own account, in business of agency without principal's consent.

216. Principal's right to benefit gained by agent dealing on his own account in business of agency.

217. Agent's right of retainer out of sums received on principal's account.

218. Agent's duty to pay sums received for principal.

219. When agent's remuneration becomes due.

220. Agent not entitled to remuneration for business mis-conducted.

221. Agent's lien on principal's property.

Principal's Duty to Agent.

222. Agent to be indemnified against consequences of lawful acts.

223. Agent to be indemnified against consequences of acts done in good faith.

224. Non-liability of employer of agent to do a criminal act.

225. Compensation to agent for injury caused by principal's neglect.

Effect of Agency on Contract with third persons.

SECTIONS.

226. Enforcement and consequences of agent's contracts.

227. Principal how far bound, when agent exceeds authority.

228. Principal not bound when excess of agent's authority is not separable.

229. Consequences of notice given to agent.

230. Agent cannot personally enforce, nor be bound by, contracts on behalf of principal.
Presumption of contract to contrary.

231. Rights of parties to a contract made by agent not disclosed.

232. Performance of contract with agent supposed to be principal.

233. Right of person dealing with agent personally liable.

234. Consequence of inducing agent or principal to act on belief that principal or agent will be held exclusively liable.

235. Liability of pretended agent.

236. Person falsely contracting as agent not entitled to performance.

237. Liability of principal inducing belief that agent's unauthorized acts were authorized.

238. Effect, on agreement, of misrepresentation or fraud by agent.

CHAPTER XI

OF PARTNERSHIP.

239 to 266. [*Repealed.*]

SCHEDULE. [*Repealed.*]

(*Preliminary.*)

ACT No. IX of 1872[1].

[*25th April, 1872.*]

THE INDIAN CONTRACT ACT, 1872.

Preamble. WHEREAS it is expedient to define and amend certain parts of the law relating to contracts; It is hereby enacted as follows:—

PRELIMINARY.

Short title. 1. This Act may be called the Indian Contract Act, 1872.

Extent. Commencement. It extends[2] to [3][the whole of India ~~except Part B States~~]; and it shall come into force on the first day of September, 1872.

[4] * * * Nothing herein contained shall affect the provisions of any Statute, Act or Regulation not hereby expressly repealed, nor any usage or custom of trade, nor any incident of any contract, not inconsistent with the provisions of this Act.

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[1] For the Statement of Objects and Reasons for the Bill which was based on a report of Her Majesty's Commissioners appointed to prepare a body of substantive law for India, dated July 6th 1866, *see* Gazette of India, 1867, Extraordinary, p 34; for the Report of the Select Committee, *see ibid*, Extraordinary, dated 28th March, 1872; for discussions in Council, *see ibid*, 1867, Supplement, p. 1064; *ibid*, 1871, p. 313; and *ibid*, 1872, p. 527.

The chapters and sections of the Transfer of Property Act, 1882 (4 of 1882), which relate to contracts are, in places in which that Act is in force, to be taken as part of this Act—see Act 4 of 1882, s. 4.

[2] This Act has been declared to be in force in the Santhal Parganas by the Santhal Parganas Settlement Regulation (3 of 1872), s. 3; and in Panth Piploda by the Panth Piploda Laws Regulation, 1929 (1 of 1929), s. 2.

It has been declared by notification under s. 3 (*a*) of the Scheduled Districts Act 1874 (14 of 1874), to be in force in the Tarai of the Province of Agra—*see* Gazette of India, 1876, Pt. I, p. 505; and in the Districts of Hazaribagh, Lohardaga and Manbhum, and Pargana Dhalbhum and the Kolhan in the District of Singbhum—*see* Gazette of India, 1881, Pt. I, p. 504. (The District of Lohardaga included at this time the present District of Palamau which was separated in 1894. The District of Lohardaga is now called the Ranchi District—*see* Calcutta Gazette, 1899, Pt. I, p. 44).

It has been extended to Berar by the Berar Laws Act, 1941 (4 of 1941)

It has been amended in C.P. by C.P. Act 1 of 1915 and in C.P. and Berar by C.P. & Berar Act 15 of 1938.

[3] Subs. by the A. O. 1950 for "all the Provinces of India" which had been subs. by the A. O. 1948 for "the whole of British India".

[4] The words "The enactments mentioned in the schedule hereto are repealed to the extent specified in the third column thereof but" rep. by the Repealing and Amending Act, 1914 (10 of 1914).

(*Preliminary. Chapter I.—Of the Communication, Acceptance and Revocation of Proposals.*)

Interpretation-clause.

2. In this Act the following words and expressions are used in the following senses, unless a contrary intention appears from the context:—

(*a*) When one person signifies to another his willingness to do or to abstain from doing anything, with a view to obtaining the assent of that other to such act or abstinence, he is said to make a proposal :

(*b*) When the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. A proposal, when accepted becomes a promise :

(*c*) The person making the proposal is called the "promisor," and the person accepting the proposal is called the "promisee" :

(*d*) When, at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or to abstain from doing, something such act or abstinence or promise is called a consideration for the promise :

(*e*) Every promise and every set of promises, forming the consideration for each other, is an agreement :

(*f*) Promises which form the consideration or part of the consideration for each other are called reciprocal promises :

(*g*) An agreement not enforceable by law is said to be void :

(*h*) An agreement enforceable by law is a contract :

(*i*) An agreement which is enforceable by law at the option of one or more of the parties thereto, but not at the option of the other or others, is a voidable contract :

(*j*) A contract which ceases to be enforceable by law becomes void when it ceases to be enforceable.

CHAPTER I.

Of the Communication, Acceptance and Revocation of Proposals.

Communication, acceptance and revocation of proposals.

3. The communication of proposals, the acceptance of proposals, and the revocation of proposals and acceptances, respectively, are deemed to be made by any act or omission of the party proposing, accepting or revoking by which he intends to communicate such proposal, acceptance or revocation, or which has the effect of communicating it.

(Chapter I.—Of the Communication, Acceptance and Revocation of Proposals.)

Communication when complete

4. The communication of a proposal is complete when it comes to the knowledge of the person to whom it is made.

The communication of an acceptance is complete,—

as against the proposer, when it is put in a course of transmission to him, so as to be out of the power of the acceptor ;

as against the acceptor, when it comes to the knowledge of the proposer.

The communication of a revocation is complete,—

as against the person who makes it, when it is put into a course of transmission to the person to whom it is made, so as to be out of the power of the person who makes it ;

as against the person to whom it is made, when it comes to his knowledge.

Illustrations.

(*a*) A proposes, by letter, to sell a house to B at a certain price.

The communication of the proposal is complete when B receives the letter.

(*b*) B accepts A's proposal by a letter sent by post.

The communication of the acceptance is complete,—

as against A, when the letter is posted;

as against B, when the letter is received by A.

(*c*) A revokes his proposal by telegram.

The revocation is complete as against A when the telegram is despatched. It is complete as against B when B receives it.

B revokes his acceptance by telegram. B's revocation is complete as against B when the telegram is despatched, and as against A when it reaches him.

Revocation of proposals and acceptances.

5. A proposal may be revoked at any time before the communication of its acceptance is complete as against the proposer, but not afterwards.

An acceptance may be revoked at any time before the communication of the acceptance is complete as against the acceptor, but not afterwards.

Illustrations.

A proposes, by a letter sent by post, to sell his house to B.

B accepts the proposal by a letter sent by post.

A may revoke his proposal at any time before or at the moment when B posts his letter of acceptance, but not afterwards.

B may revoke his acceptance at any time before or at the moment when the letter communicating it reaches A, but not afterwards.

(Chapter I.—Of the Communication, Acceptance and Revocation of Proposals. Chapter II.—Of Contracts, Voidable Contracts and Void Agreements).

Revocation how made.

6. A proposal is revoked—

(1) by the communication of notice of revocation by the proposer to to the other party ;

(2) by the lapse of the time prescribed in such proposal for its acceptance, or, if no time is so prescribed, by the lapse of a reasonable time, without communication of the acceptance ;

(3) by the failure of the acceptor to fulfil a condition precedent to acceptance ; or

(4) by the death or insanity of the proposer, if the fact of his death or insanity comes to the knowledge of the acceptor before acceptance.

Acceptance must be absolute.

7. In order to convert a proposal into a promise, the acceptance must—

(1) be absolute and unqualified ;

(2) be expressed in some usual and reasonable manner, unless the proposal prescribes the manner in which it is to be accepted. If the proposal prescribes a manner in which it is to be accepted, and the acceptance is not made in such manner, the proposer may, within a reasonable time after the acceptance is communicated to him, insist that his proposal shall be accepted in the prescribed manner, and not otherwise ; but if he fails to do so, he accepts the acceptance.

Acceptance by performing conditions, or receiving consideration.

8. Performance of the conditions of a proposal, or the acceptance of any consideration for a reciprocal promise which may be offered with a proposal, is an acceptance of the proposal.

Promises, express and implied.

9. In so far as the proposal or acceptance of any promise is made in words, the promise is said to be express. In so far as such proposal or acceptance is made otherwise than in words, the promise is said to be implied.

CHAPTER II.

Of Contracts, Voidable Contracts and Void Agreements.

What agreements are contracts.

10. All agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object, and are not hereby expressly declared to be void.

Nothing herein contained shall affect any law in force in [1][~~Part A States and Part C States~~] and not hereby expressly repealed by which any contract is required to be made in writing[2] or in the presence of witnesses, or any law relating to the registration of documents.

Who are competent to contract

11. Every person is competent to contract who is of the age of majority according to the law to which he is subject,[3] and who is of sound mind, and is not disqualified from contracting by any law to which he is subject.

What is a sound mind for the purposes of contracting.

12. A person is said to be of sound mind for the purpose of making a contract if, at the time when he makes it, he is capable of understanding it and of forming a rational judgment as to its effect upon his interests.

A person who is usually of unsound mind, but occasionally of sound mind, may make a contract when he is of sound mind.

A person who is usually of sound mind, but occasionally of unsound mind, may not make a contract when he is of unsound mind.

Illustrations.

(*a*) A patient in a lunatic asylum, who is at intervals of sound mind, may contract during those intervals.

(*b*) A sane man, who is delirious from fever or who is so drunk that he cannot understand the terms of a contract or form a rational judgment as to its effect on his interests, cannot contract whilst such delirium or drunkenness lasts.

"Consent" defined.

13. Two or more persons are said to consent when they agree upon the same thing in the same sense.

"Free consent" defined.

14. Consent is said to be free when it is not caused by—

(1) coercion, as defined in section 15, or

(2) undue influence, as defined in section 16, or

(3) fraud, as defined in section 17, or

(4) misrepresentation, as defined in section 18, or

(5) mistake, subject to the provisions of sections 20, 21 and 22.

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[1] Subs. by the A. O. 1950 for "the Provinces" which had been subs. by the A. O. 1948 for "British India."

[2] *See e.g.*, s. 25, *infra*; the Indian Copyright Act, 1914 (3 of 1914), s. 5 of the First Schedule; the Apprentices Act, 1850 (19 of 1850), s. 8; the Conveyance of Land Act, 1854 (31 of 1854), ss. 14 and 18; the Carriers Act, 1865 (3 of 1865), ss. 6 and 7; the Merchant Shipping Act, 1894 (57 and 58 Vict., c. 60), s. 24, (Coll. Stat., Vol. II); the Imperial Bank of India Act, 1920 (47 of 1920), s. 21; the Indian Companies Act, 1913 (7 of 1913), ss. 5, 19, 35 and 88.

[3] *See* the Indian Majority Act, 1875 (9 of 1875).

Consent is said to be so caused when it would not have been given but for the existence of such coercion, undue influence, fraud, misrepresentation or mistake.

15. "Coercion" is the committing, or threatening to commit, any act forbidden by the Indian Penal Code, or the unlawful detaining, or threatening to detain, any property, to the prejudice of any person whatever, with the intention of causing any person to enter into an agreement. "Coercion" defined.

XLV of 1860.

Explanation.—It is immaterial whether the Indian Penal Code is or is not in force in the place where the coercion is employed

XLV of 1860.

Illustration.

A, on board an English ship on the high seas, causes B to enter into an agreement by an act amounting to criminal intimidation under the Indian Penal Code.

XLV of 1860.

A afterwards sues B for breach of contract at Calcutta.

A has employed coercion, although his act is not an offence by the law of England, and although section 506 of the Indian Penal Code was not in force at the time when or place where the act was done.

XLV of 1860.

[1][**16.** *(1)* A contract is said to be induced by "undue influence" where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other. "Undue influence" defined.

(2) In particular and without prejudice to the generality of the foregoing principle, a person is deemed to be in a position to dominate the will of another—

(*a*) where he holds a real or apparent authority over the other or where he stands in a fiduciary relation to the other: or

(*b*) where he makes a contract with a person whose mental capacity is temporarily or permanently affected by reason of age, illness, or mental or bodily distress.

(*3*) Where a person who is in a position to dominate the will of another, enters into a contract with him, and the transaction appears, on the face of it or on the evidence adduced, to be unconscionable, the burden of proving that such contract was not induced by undue influence shall lie upon the person in a position to dominate the will of the other.

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[1] Subs. by the Indian Contract Act Amendment Act, 1899 (6 of 1899), s. 2, for the original s. 16.

Nothing in this sub-section shall affect the provisions of section 111 of the Indian Evidence Act, 1872. I of 1872.

Illustrations.

(*a*) A having advanced money to his son, B, during his minority, upon B's coming of age obtains, by misuse of parental influence, a bond from B for a greater amount than the sum due in respect of the advance. A employs undue influence.

(*b*) A, a man enfeebled by disease or age, is induced, by B's influence over him as his medical attendant, to agree to pay B an unreasonable sum for his professional services. B employs undue influence.

(*c*) A, being in debt to B, the money-lender of his village, contracts a fresh loan on terms which appear to be unconscionable. It lies on B to prove that the contract was not induced by undue influence.

(*d*) A applies to a banker for a loan at a time when there is stringency in the money market. The banker declines to make the loan except at an unusually high rate of interest. A accepts the loan on these terms. This is a transaction in the ordinary course of business, and the contract is not induced by undue influence.]

"Fraud" defined.

17. "Fraud" means and includes any of the following acts committed by a party to a contract, or with his connivance, or by his agent,[1] with intent to deceive another party thereto or his agent, or to induce him to enter into the contract :—

(1) the suggestion, as a fact, of that which is not true, by one who does not believe it to be true ;

(2) the active concealment of a fact by one having knowledge or belief of the fact ;

(3) a promise made without any intention or performing it;

(4) any other act fitted to deceive ;

(5) any such act or omission as the law specially declares to be fraudulent.

Explanation.—Mere silence as to facts likely to affect the willingness of a person to enter into a contract is not fraud, unless the circumstances of the case are such that, regard being had to them, it is the duty of the person keeping silence to speak,[2] or unless his silence is, in itself, equivalent to speech.

Illustrations.

(*a*) A sells, by auction, to B, a horse which A knows to be unsound. A says nothing to B about the horse's unsoundness. This is not fraud in A.

(*b*) B is A's daughter and has just come of age. Here, the relation between the parties would make it A's duty to tell B if the horse is unsound.

(*c*) B says to A—"If you do not deny it, I shall assume that the horse is sound." A says nothing. Here, A's silence is equivalent to speech.

(*d*) A and B, being traders, enter upon a contract. A has private information of a change in prices which would affect B's willingness to proceed with the contract. A is not bound to inform B.

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[1] *Cf.* s. 238, *infra.*

[2] *See* s. 143, *infra.*

(Chapter II.—Of Contracts, Voidable Contracts and Void Agreements.)

18. "Misrepresentation" means and includes— "Misrepresentation" defined.

(1) the positive assertion, in a manner not warranted by the information of the person making it, of that which is not true, though he believes it to be true ;

(2) any breach of duty which, without an intent to deceive, gains an advantage to the person committing it, or any one claiming under him, by misleading another to his prejudice or to the prejudice of any one claiming under him ;

(3) causing, however innocently, a party to an agreement to make a mistake as to the substance of the thing which is the subject of the agreement.

19. When consent to an agreement is caused by coercion, [1]* * fraud or misrepresentation, the agreement is a contract voidable at the option of the party whose consent was so caused. Voidability of agreements without free consent.

A party to a contract, whose consent was caused by fraud or misrepresentation, may, if he thinks fit, insist that the contract shall be performed, and that he shall be put in the position in which he would have been if the representations made had been true.

Exception.—If such consent was caused by misrepresentation or by silence, fraudulent within the meaning of section 17, the contract, nevertheless, is not voidable, if the party whose consent was so caused had the means of discovering the truth with ordinary diligence.

Explanation.—A fraud or misrepresentation which did not cause the consent to a contract of the party on whom such fraud was practised, or to whom such misrepresentation was made, does not render a contract voidable.

Illustrations.

(*a*) A, intending to deceive B, falsely represents that five hundred maunds of indigo are made annually at A's factory, and thereby induces B to buy the factory. The contract is voidable at the option of B.

(*b*) A, by a misrepresentation, leads B erroneously to believe that five hundred maunds of indigo are made annually at A's factory. B examines the accounts of the factory, which show that only four hundred maunds of indigo have been made. After this B buys the factory. The contract is not voidable on account of A's misrepresentation.

(*c*) A fraudulently informs B that A's estate is free from incumbrance. B thereupon buys the estate. The estate is subject to a mortgage. B may either avoid the contract, or may insist on its being carried out and the mortgage debt redeemed.

(*d*) B, having discovered a vein of ore on the estate of A, adopts means to conceal, and does conceal, the existence of the ore from A. Through A's ignorance B is enabled to buy the estate at an under-value. The contract is voidable at the option of A.

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[1] The words "undue influence", rep. by the Indian Contract Act Amendment Act, 1899 (6 of 1899), s. 3.

(*e*) A is entitled to succeed to an estate at the death of B; B dies: C, having received intelligence of B's death, prevents the intelligence reaching A, and thus induces A to sell him his interest in the estate. The sale is voidable at the option of A.

Power to set aside contract induced by undue influence.

[1][**19A.** When consent to an agreement is caused by undue influence, the agreement is a contract voidable at the option of the party whose consent was so caused.

Any such contract may be set aside either absolutely or, if the party who was entitled to avoid it has received any benefit thereunder, upon such terms and conditions as to the Court may seem just.

Illustrations.

(*a*) A's son has forged B's name to a promissory note. B, under threat of prosecuting A's son, obtains a bond from A for the amount of the forged note. If B sues on this bond, the Court may set the bond aside.

(*b*) A, a money-lender, advances Rs. 100 to B, an agriculturist, and, by undue influence, induces B to execute a bond for Rs. 200 with interest at 6 per cent. per month. The Court may set the bond aside, ordering B to repay the Rs. 100 with such interest as may seem just.]

Agreement void where both parties are under mistake as to matter of fact.

20. Where both the parties to an agreement are under a mistake as to a matter of fact essential to the agreement, the agreement is void.

Explanation.—An erroneous opinion as to the value of the thing which forms the subject-matter of the agreement is not to be deemed a mistake as to a matter of fact.

Illustrations.

(*a*) A agrees to sell to B a specific cargo of goods supposed to be on its way from England to Bombay. It turns out that, before the day of the bargain, the ship conveying the cargo had been cast away and the goods lost. Neither party was aware of the facts. The agreement is void.

(*b*) A agrees to buy from B a certain horse. It turns out that the horse was dead at the time of the bargain, though neither party was aware of the fact. The agreement is void.

(*c*) A, being entitled to an estate for the life of B, agrees to sell it to C. B was dead at the time of the agreement, but both parties were ignorant of the fact. The agreement is void.

Effect of mistakes as to law.

21. A contract is not voidable because it was caused by a mistake as to any law in force in [2][India]; but a mistake as to a law not in force in [2][India] has the same effect as a mistake of fact.

[3]* * * * *

Illustration.

A and B make a contract grounded on the erroneous belief that a particular debt is barred by the Indian Law of Limitation: the contract is not voidable.

[4]* * * * *

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[1] Ins. by the Indian Contract Act Amendment Act, 1899 (6 of 1899), s. 3.

[2] The original words "British India" have successively been amended by the A. O. 1948 and the A. O. 1950 to read as above.

[3] Para. 2 as ins. by the A. O. 1937 and as amended by the A. O. 1948 was rep. by the A. O. 1950.

[4] The second illustration was rep. by the Repealing and Amending Act, 1917 (24 of 1917), s. 3 and Sch. II.

(*Chapter II.—Of Contracts, Voidable Contracts and Void Agreements.*)

22. A contract is not voidable merely because it was caused by one of the parties to it being under a mistake as to a matter of fact.

Contract caused by mistake of one party as to matter of fact.

23. The consideration or object of an agreement is lawful, unless—it is forbidden by law[1] ; or

What considerations and objects are lawful and what not.

is of such a nature that, if permitted, it would defeat the provisions of any law ; or

is fraudulent ; or

involves or implies injury to the person or property of another; or

the Court regards it as immoral, or opposed to public policy.

In each of these cases, the consideration or object of an agreement is said to be unlawful. Every agreement of which the object or consideration is unlawful is void.

Illustrations.

(*a*) A agrees to sell his house to B for 10,000 rupees. Here B's promise to pay the sum of 10,000 rupees is the consideration for A's promise to sell the house, and A's promise to sell the house is the consideration for B's promise to pay the 10,000 rupees. These are lawful considerations.

(*b*) A promises to pay B 1,000 rupees at the end of six months; if C, who owes that sum to B, fails to pay it. B promises to grant time to C accordingly. Here the promise of each party is the consideration for the promise of the other party and they are lawful considerations.

(*c*) A promises, for a certain sum paid to him by B, to make good to B the value of his ship if it is wrecked on a certain voyage. Here A's promise is the consideration for B's payment and B's payment is the consideration for A's promise and these are lawful considerations.

(*d*) A promises to maintain B's child and B promises to pay A 1,000 rupees yearly for the purpose. Here the promise of each party is the consideration for the promise of the other party. They are lawful considerations.

(*e*) A, B and C enter into an agreement for the division among them of gains acquired, or to be acquired, by them by fraud. The agreement is void, as its object is unlawful.

(*f*) A promises to obtain for B an employment in the public service, and B promises to pay 1,000 rupees to A. The agreement is void, as the consideration for it is unlawful.

(*g*) A, being agent for a landed proprietor, agrees for money, without the knowledge of his principal, to obtain for B a lease of land belonging to his principal. The agreement between A and B is void, as it implies a fraud by concealment by A, on his principal.

(*h*) A promises B to drop a prosecution which he has instituted against B for robbery, and B promises to restore the value of the things taken. The agreement is void, as its object is unlawful.

(*i*) A's estate is sold for arrears of revenue under the provisions of an Act of the Legislature, by which the defaulter is prohibited from purchasing the estate. B, upon an understanding with A, becomes the purchaser, and agrees to convey the

[1] *See* ss. 26, 27, 28, 30, *infra*.

estate to A upon receiving from him the price which B has paid. The agreement is void, as it renders the transaction, in effect, a purchase by the defaulter, and would so defeat the object of the law.

(*j*) A, who is B's mukhtar, promises to exercise his influence, as such, with B in favour of C, and C promises to pay, 1,000 rupees to A. The agreement is void, because it is immoral.

(*k*) A agrees to let her daughter to hire to B for concubinage. The agreement is void, because it is immoral, though the letting may not be punishable under the Indian Penal Code. XLV of 1860.

Void Agreements.

Agreements void, if considerations and objects unlawful in part.

24. If any part of a single consideration for one or more objects, or any one or any part of any one of several considerations for a single object, is unlawful, the agreement is void.

Illustration.

A promises to superintend, on behalf of B, a legal manufacture of indigo, and an illegal traffic in other articles. B promises to pay to A a salary of 10,000 rupees a year. The agreement is void, the object of A's promise and the consideration for B's promise being in part unlawful.

Agreement without consideration void, unless it is in writing and registered, or is a promise to compensate for something done, or is a promise to pay a debt barred by limitation law.

25. An agreement made without consideration is void, unless—

(1) it is expressed in writing and registered under the law for the time being in force for the registration of [1][documents], and is made on account of natural love and affection between parties standing in a near relation to each other ; or unless

(2) it is a promise to compensate, wholly or in part, a person who has already voluntarily done something for the promisor, or something which the promisor was legally compellable to do, or unless

(3) it is a promise, made in writing and signed by the person to be charged therewith, or by his agent generally or specially authorized in that behalf, to pay wholly or in part a debt of which the creditor might have enforced payment but for the law for the limitation of suits.

In any of these cases, such an agreement is a contract.

Explanation 1.—Nothing in this section shall affect the validity, as between the donor and donee, of any gift actually made.

Explanation 2.—An agreement to which the consent of the promisor is freely given is not void merely because the consideration is inadequate; but the inadequacy of the consideration may be taken into account by the Court in determining the question whether the consent of the promisor was freely given.

Illustrations.

(*a*) A promises, for no consideration, to give to B Rs. 1,000. This is a void agreement.

[1] Subs. by the Amending Act, 1891 (12 of 1891), for "assurances"

(*b*) A, for natural love and affection, promises to give his son, B, Rs. 1,000. A puts his promise to B into writing and registers it. This is a contract.

(*c*) A find B's purse and gives it to him. B promises to give A Rs. 50. This is a contract.

(*d*) A supports B's infant son. B promises to pay A's expenses in so doing. This is a contract.

(*e*) A owes B Rs. 1,000, but the debt is barred by the Limitation Act. A signs a written promise to pay B Rs. 500 on account of the debt. This is a contract.

(*f*) A agrees to sell a horse worth Rs. 1,000 for Rs. 10. A's consent to the agreement was freely given. The agreement is a contract notwithstanding the inadequacy of the consideration.

(*g*) A agrees to sell a horse worth Rs. 1,000 for Rs. 10. A denies that his consent to the agreement was freely given.

The inadequacy of the consideration is a fact which the Court should take into account in considering whether or not A's consent was freely given.

Agreement in restraint of marriage void.

26. Every agreement in restrain of the marriage of any person, other than a minor, is void.

Agreement in restraint of trade void.

27. Every agreement by which any one is restrained from exercising a lawful profession, trade or business of any kind, is to that extent void.

Saving of agreement not to carry on business of which good-will is sold.

Exception 1.—One who sells the good-will of a business may agree with the buyer to refrain from carrying in a similar business, within specified local limits, so long as the buyer, or any person deriving title to the good-will from him, carries on a like business therein : Provided that such limits appear to the Court reasonable, regard being had to the nature of the business.

[1]* * * * *

Agreements in restraint of legal proceedings void.

28. Every agreement, by which any party thereto is restricted absolutely from enforcing his rights under or in respect of any contract, by the usual legal proceedings in the ordinary tribunals, or which limits the time within which he may thus enforce his rights, is void to that extent.

Saving of contract to refer to arbitration dispute that may arise.

Exception 1.—This section shall not render illegal a contract by which two or more persons agree that any dispute which may arise between them in respect of any subject or class of subjects shall be referred to arbitration, and that only the amount awarded in such arbitration shall be recoverable in respect of the dispute so referred.

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[1] Exceptions 2 and 3 relating to agreements between partners upon, or in anticipation of, dissolution of partnership and during continuance of partnership, respectively, rep. by the Indian Partnership Act, 1932 (9 of 1932), s. 73 and Sch. II. *See* now ss. 11 (2) and 36 (2) of that Act.

Suits barred by such Contracts.

[1] *When such a contract has been made, a suit may be brought for its specific performance, and if a suit, other than for such specific performance, or for the recovery of the amount so awarded, is brought by one party to such contract against any other such party in respect of any subject which they have so agreed to refer, the existence of such contract shall be a bar to the suit.*

Saving of contract to refer questions that have already arisen.

Exception 2.—Nor shall this section render illegal any contract in writing, by which two or more persons agree to refer to arbitration any question between them which has already arisen, or affect any provision of any law in force for the time being as to references to arbitration.[2]

Agreements void for uncertainty.

29. Agreements, the meaning of which is not certain, or capable of being made certain, are void.

Illustrations.

(*a*) A agrees to sell to B "a hundred tons of oil." There is nothing whatever to show what kind of oil was intended. The agreement is void for uncertainty.

(*b*) A agrees to sell to B one hundred tons of oil of a specified description, known as an article of commerce. There is no uncertainty here to make the agreement void.

(*c*) A, who is a dealer in cocoanut-oil only, agrees to sell to B "one hundred tons of oil." The nature of A's trade affords an indication of the meaning of the words, and A has entered into a contract for the sale of one hundred tons of cocoanut-oil.

(*d*) A agrees to sell B "all the grain in my granary at Ramnagar". There is no uncertainty here to make the agreement void.

(*e*) A agrees to sell to B "one thousand maunds of rice at a price to be fixed by C." As the price is capable of being made certain, there is no uncertainty here to make the agreement void.

(*f*) A agrees to sell to B "my white horse for rupees five hundred or rupees one thousand." There is nothing to show which of the two prices was to be given. The agreement is void.

Agreements by way of wager void.

30. Agreements by way of wager are void; and no suit shall be brought for recovering anything alleged to be won on any wager, or entrusted to any person to abide the result of any game or other uncertain event on which any wager is made.

Exception in favour of certain prizes for horse-racing.

This section shall not be deemed to render unlawful a subscription, or contribution, or agreement to subscribe or contribute, made or entered into for or toward any plate, prize or sum of money, of the value or amount of five

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[1] The second clause of *exception 1* to section 28 was repealed by the Specific Relief Act, 1877 (1 of 1877). The clause is, however, printed here in italics, because the Contract Act is in force in certain Scheduled Districts to which the Specific Relief Act does not apply.

[2] *Cf.* the Arbitration Act, 1940 (10 of 1940), and the Indian Companies Act, 1913 (7 of 1913), s. 152.

hundred rupees or upwards, to be awarded to the winner or winners of any horse race.[1]

Nothing in this section shall be deemed to legalize any transaction connected with horse-racing, to which the provisions of section 294A of the Indian Penal Code apply. Section 294A of the Indian Penal Code not affected.

XLV of 1860

CHAPTER III

OF CONTINGENT CONTRACTS.

31. A "contingent contract" is a contract to do or not to do some thing, if some event, collateral to such contract, does or does not happen. "Contingent contract" defined.

Illustration.

A contracts to pay B Rs. 10,000 if B's house is burnt. This is a contingent contract.

32. Contingent contracts to do or not to do anything if an uncertain future event happens cannot be enforced by law unless and until that event has happened. Enforcement of contracts contingent on an event happening.

If the event becomes impossible, such contracts become void.

Illustrations.

(*a*) A makes a contract with B to buy B's horse if A survives C. This contract cannot be enforced by law unless and until C dies in A's lifetime.

(*b*) A makes a contract with B to sell a horse to B at a specified price, if C, to whom the horse has been offered, refuses to buy him. The contract cannot be enforced by law unless and until C refuses to buy the horse.

(*c*) A contracts to pay B a sum of money when B marries C. C dies without being married to B. The contract becomes void.

33. Contingent contracts to do or not to do anything if an uncertain future event does not happen can be enforced when the happening of that event becomes impossible, and not before. Enforcement of contracts contingent on an event not happening.

Illustration.

A agrees to pay B a sum of money if a certain ship does not return. The ship is sunk. The contract can be enforced when the ship sinks.

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[1] *Cf.* the Gaming Act (8 and 9 Vict., c. 109), s. 18.

(Chapter III.—Of Contingent Contracts. Chapter IV.—Of the Performance of Contracts.)

When event on which contract is contingent to be deemed impossible, if it is the future conduct of a living person.

34. If the future event on which a contract is contingent is the way in which a person will act at an unspecified time, the event shall be considered to become impossible when such person does anything which renders it impossible that he should so act within any definite time, or otherwise than under further contingencies.

Illustrations.

A agrees to pay B a sum of money if B marries C.

C marries D. The marriage of B to C must now be considered impossible, although it is possible that D may die and that C may afterwards marry B.

When contracts become void which are contingent on happening of specified event within fixed time.

35. Contingent contracts to do or not to do anything if a specified uncertain event happens within a fixed time become void if, at the expiration of the time fixed, such event has not happened, or if, before the time fixed, such event becomes impossible

When contracts may be enforced which are contingent on specified even not happening within fixed time.

Contingent contracts to do or not to do anything if a specified uncertain event does not happen within a fixed time may be enforced by law when the time fixed has expired and such event has not happened or, before the time fixed has expired, if it becomes certain that such event will not happen.

Illustration.

(*a*) A promises to pay B a sum of money if a certain ship returns within a year. The contract may be enforced if the ship returns within the year, and because void if the ship is burnt within the year.

(*b*) A promises to pay B a sum of money if a certain ship does not return within a year. The contract may be enforced if the ship does not return within the year, or is burnt within the year.

Agreement contingent on impossible events void.

36. Contingent agreements to do or not to do anything, if an impossible event happens, are void, whether the impossibility of the event is known or not to the parties to the agreement at the time when it is made.

Illustrations.

(*a*) A agrees to pay B 1,000 rupees if two straight lines should enclose a space. The agreement is void.

(*b*) A agrees to pay B 1,000 rupees if B will marry A's daughter C. C was dead at the time of the agreement. The agreement is void.

CHAPTER IV.

OF THE PERFORMANCE OF CONTRACTS.

Contracts which must be performed.

Obligation of parties to contracts.

37. The parties to a contract must either perform, or offer to perform, their respective promises, unless such performance is dispensed with or excused under the provisions of this Act, or of any other law.

(Chapter IV.—Of the Performance of Contracts.)

Promises bind the representatives of the promisors in case of the death of such promisors before performance, unless a contrary intention appears from the contract.

Illustrations.

(*a*) A promises to deliver goods to B on a certain day on payment of Rs. 1,000. A dies before that day. A's representatives are bound to deliver the goods to B, and B is bound to pay the Rs. 1,000 to A's representatives.

(*b*) A promises to paint a picture for B by a certain day, at a certain price. A dies before the day. The contract cannot be enforced either by A's representatives or by B.

Effect of refusal to accept offer of performance.

38. Where a promisor has made an offer of performance to the promisee, and the offer has not been accepted, the promisor is not responsible for non-performance, nor does he thereby lose his rights under the contract.

Every such offer must fulfil the following conditions :—

(1) it must be unconditional :

(2) it must be made at a proper time and place, and under such circumstances that the person to whom it is made may have a reasonable opportunity of ascertaining that the person by whom it is made is able and willing there and then to do the whole of what he is bound by his promise to do :

(3) if the offer is an offer to deliver anything to the promisee, the promisee must have a reasonable opportunity of seeing that the thing offered is the thing which the promisor is bound by his promise to deliver.

An offer to one of several joint promisees has the same legal consequences as an offer to all of them.

Illustration.

A contracts to deliver to B at his warehouse, on the 1st March, 1873, 100 bales of cotton of a particular quality. In order to make an offer of a performance with the effect stated in this section, A must bring the cotton to B's warehouse, on the appointed day, under such circumstances that B may have a reasonable opportunity of satisfying himself that the thing offered is cotton of the quality contracted for, and that there are 100 bales.

Effect of refusal of party to perform promise wholly.

39. When a party to a contract has refused to perform, or disabled himself from performing, his promise in its entirety, the promisee may put an end to the contract, unless he has signified, by words or conduct, his acquiescence in its continuance.

Illustrations.

(*a*) A, a singer, enters into a contract with B, the manager of a theatre, to sing at his theatre two nights in every week during the next two months, and B engages to pay her 100 rupees for each night's performance. On the sixth night A wilfully absents herself from the theatre. B is at liberty to put an end to the contract.

(*b*) A, a singer, enters into a contract with B, the manager of a theatre, to sing at his theatre two nights in every week during the next two months, and B engages to pay her at the rate of 100 rupees for each night. On the sixth night A wilfully absents herself. With the assent of B, A sings on the seventh night. B has signified his acquiescence in the continuance of the contract, and cannot now put an end to it, but is entitled to compensation for the damage sustained by him through A's failure to sing on the sixth night.

By whom Contracts must be performed.

Person by whom promise is to be performed.

40. If it appears from the nature of the case that it was the intention of the parties to any contract that any promise contained in it should be performed by the promisor himself, such promise must be performed by the promisor. In other cases, the promisor or his representatives may employ a competent person to perform it.

Illustrations.

(*a*) A promises to pay B a sum of money. A may perform this promise, either by personally paying the money to B or by causing it to be paid to B by another; and, if A dies before the time appointed for payment, his representatives must perform the promise, or employ some proper person to do so.

(*b*) A promises to paint a picture for B. A must perform this promise personally.

Effect of accepting performance from third person.

41. When a promisee accepts performance of the promise from a third person, he cannot afterwards enforce it against the promisor.

Devolution of joint liabilities.

42. When two or more persons have made a joint promise, then, unless a contrary intention appears by the contract, all such persons during their joint lives, and after the death of any of them, his representative jointly with the survivor or survivors, and after the death of the last survivor, the representatives of all jointly, must fulfil the promise.

Any one of joint promisors may be compelled to perform.

43. When two or more persons make a joint promise, the promisee may in the absence of express agreement to the contrary, compel any [1][one or more] of such joint promisors to perform the whole of the promise.

Each promisor may compel contribution.

Each of two or more joint promisors may compel every other joint promisor to contribute equally with himself to the performance of the promise, unless a contrary intention appears from the contract.

Sharing of loss by default in contribution.

If any one of two or more joint promisors makes default in such contribution, the remaining joint promisors must bear the loss arising from such default in equal shares.

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[1] Subs. by the Amending Act, 1891 (12 of 1891), for "one".

(Chapter IV.—Of the Performance of Contracts.)

Explanation.—Nothing in this section shall prevent a surety from recovering from his principal, payments made by the surety on behalf of the principal, or entitle the principal to recover anything from the surety on account of payments made by the principal.

Illustrations.

(*a*) A, B and C jointly promise to pay D 3,000 rupees. D may compel either A or B or C to pay him 3,000 rupees.

(*b*) A, B and C jointly promise to pay D the sum of 3,000 rupees. C is compelled to pay the whole. A is insolvent, but his assets are sufficient to pay one-half of his debts. C is entitled to receive 500 rupees from A's estate, and 1,250 rupees from B.

(*c*) A, B and C are under a joint promise to pay D 3,000 rupees. C is unable to pay anything, and A is compelled to pay the whole. A is entitled to receive 1,500 rupees from B.

(*d*) A, B and C are under a joint promise to pay D 3,000 rupees, A and B being only sureties for C. C fails to pay. A and B are compelled to pay the whole sum. They are entitled to recover it from C.

Effect of release of one joint promisor.

44. Where two or more persons have made a joint promise, a release of one of such joint promisors by the promisee does not discharge the other joint promisor or joint promisors; neither does it free the joint promisors so released from responsibility to the other joint promisor or joint promisors.[1]

Devolution of joint rights.

45. When a person has made a promise to two or more persons jointly, then, unless a contrary intention appears from the contract, the right to claim performance rests, as between him and them, with them during their joint lives, and, after the death of any of them, with the representative of such deceased person jointly with the survivor or survivors, and, after the death of the last survivor, with the representatives of all jointly.[2]

Illustration.

A, in consideration of 5,000 rupees, lent to him by B and C, promises B and C jointly to repay them that sum with interest on a day specified. B dies. The right to claim performance rests with B's representative jointly with C during C's life, and after the death of C with the representatives of B and C jointly.

Time and Place for Performance.

Time for performance of promise where no application is to be made and no time is specified.

46. Where, by the contract, a promisor is to perform his promise without application by the promisee, and no time for performance is specified, the engagement must be performed within a reasonable time.

Explanation.—The question "what is a reasonable time" is, in each particular case, a question of fact.

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[1] *See* s. 138, *infra*.

[2] For an exception to s. 48 in case of Government securities, *see* the Indian Securities Act, 1920 (10 of 1920), s. 4.

(Chapter IV.—Of the Performance of Contracts.)

Time and place for performance of promise where time is specified and no application to be made.

47. When promise is to be performed on a certain day, and the promisor has undertaken to perform it without application by the promisee, the promisor may perform it at any time during the usual hours of business on such day and at the place at which the promise ought to be performed.

Illustration.

A promises to deliver goods at B's warehouse on the first January. On that day A brings the goods to B's warehouse, but after the usual hour for closing it, and they are not received. A has not performed his promise.

Application for performance on certain day to be at proper time and place.

48. When a promise is to be performed on a certain day, and the promisor has not undertaken to perform it without application by the promisee, it is the duty of the promisee to apply for performance at a proper place and within the usual hours of business.

Explanation.—The question "what is a proper time and place" is, in each particular case, a question of fact.

Place for performance of promise where no application to be made and no place fixed for performance.

49. When a promise is to be performed without application by the promisee, and no place is fixed for the performance of it, it is the duty of the promisor to apply to the promisee to appoint a reasonable place for the performance of the promise, and to perform it at such place.

Illustration.

A undertakes to deliver a thousand maunds of jute to B on a fixed day. A must apply to B to appoint a reasonable place for the purpose of receiving it, and must deliver it to him at such place.

Performance in manner or at time prescribed or sanctioned by promisee.

50. The performance of any promise may be made in any manner, or at any time which the promisee prescribes or sanctions.

Illustrations.

(*a*) B owes A 2,000 rupees. A desires B to pay the amount to A's account with C, a banker. B, who also banks with C, order the amount to be transferred from his account to A's credit, and this is done by C. Afterwards, and before A knows of the transfer, C fails. There has been a good payment by B.

(*b*) A and B are mutually indebted. A and B settle an account by setting off one item against another, and B pays A the balance found to be due from him upon such settlement. This amounts to a payment by A and B, respectively, of the sums which they owed to each other.

(*c*) A owes B 2,000 rupees. B accepts some of A's goods in reduction of the debt. The delivery of goods operates as a part payment.

(*d*) A desires B, who owes him Rs. 100, to send him a note for Rs. 100 by post. The debt is discharged as soon as B puts into the post a letter containing the note duly addressed to A.

(Chapter IV.—Of the Performance of Contracts.)

Performance of Reciprocal Promises.

Promisor not bound to perform, unless reciprocal promisee ready and willing to perform.

51. When a contract consists of reciprocal promises to be simultaneously performed, no promisor need perform his promise unless the promisee is ready and willing to perform his reciprocal promise.

Illustrations.

(*a*) A and B contract that A shall deliver goods to B to be paid for by B on delivery.

A need not deliver the goods, unless B is ready and willing to pay for the goods on delivery.

B need not pay for the goods, unless A is ready and willing to deliver them on payment.

(*b*) A and B contract that A shall deliver goods to B at a price to be paid by instalments, the first instalment to be paid on delivery.

A need not deliver, unless B is ready and willing to pay the first instalment on delivery.

B need not pay the first instalment, unless A is ready and willing to deliver the goods on payment of the first instalment.

Order of performance of reciprocal promises.

52. Where the order in which reciprocal promises are to be performed is expressly fixed by the contract, they shall be performed in that order; and, where the order is not expressly fixed by the contract, they shall be performed in that order which the nature of the transaction requires.

Illustrations.

(*a*) A and B contract that A shall build a house for B at a fixed price. A's promise to build the house must be performed before B's promise to pay for it.

(*b*) A and B contract that A shall make over his stock-in-trade to B at a fixed price, and B promises to give security for the payment for the money. A's promise need not be performed until the security is given, for the nature of the transaction requires that A should have security before he delivers up his stock.

Liability of party preventing event on which the contract is to take effect.

53. When a contract contains reciprocal promises, and one party to the contract prevents the other from performing his promise, the contract becomes voidable at the option of the party so prevented; and he is entitled to compensation [1]from the other party for any loss which he may sustain in consequence of the non-performance of the contract.

Illustration.

A and B contract that B shall execute certain work for A for a thousand rupees, B is ready and willing to execute the work accordingly, but A prevents him from doing so. The contract is voidable at the option of B; and, if he elects to rescind it, he is entitled to recover from A compensation for any loss which he has incurred by its non-performance.

Effect of default as to that promise which should

54. When a contract consists of reciprocal promises, such that one of them cannot be performed, or that its performance cannot be claimed till the other has been performed, and the promisor of the promise last mentioned

[1] *See* s. 73, *infra*.

be first performed, in contract consisting of reciprocal promises.

fails to perform it, such promisor cannot claim the performance of the reciprocal promise, and must make compensation to the other party to the contract for any loss which such other party may sustain by the non-performance of the contract.

Illustrations.

(*a*) A hires B's ship to take in and convey, from Calcutta to the Mauritius, a cargo to be provided by A, B receiving a certain freight for its conveyance. A does not provide any cargo for the ship. A cannot claim the performance of B's promise, and must make compensation to B for the loss which B sustains by the non-performance of the contract.

(*b*) A contracts with B to execute certain builder's work for a fixed price, B supplying the scaffolding and timber necessary for the work. B refuses to furnish any scaffolding or timber, and the work cannot be executed. A need not execute the work, and B is bound to make compensation to A for any loss caused to him by the non-performance of the contract.

(*c*) A contracts with B to deliver to him, at a specified price, certain merchandise on board a ship which cannot arrive for a month, and B engages to pay for the merchandise within a week from the date of the contract. B does not pay within the week. A's promise to deliver need not be performed, and B must make compensation.

(*d*) A promises B to sell him one hundred bales of merchandise, to be delivered next day, and B promises A to pay for them within a month. A does not deliver according to his promises. B's promise to pay need not be performed, and A must make compensation.

Effect of failure to perform at fixed time, in contract in which time is essential.

55. When a party to a contract promises to do a certain thing at or before a specified time, or certain things at or before specified times, and fails to do any such thing at or before the specified time, the contract, or so much of it as has not been performed, becomes voidable at the option of the promisee, if the intention of the parties was that time should be of the essence of the contract.

Effect of such failure when time is not essential.

If it was not the intention of the parties that time should be of the essence of the contract, the contract does not become voidable by the failure to do such thing at or before the specified time ; but the promisee is entitled to compensation from the promisor for any loss occasioned to him by such failure.

Effect of acceptance of performance at time other than that agreed upon.

If, in case of a contract voidable on account of the promisor's failure to perform his promise at the time agreed, the promisee accepts performance of such promise at any time other than that agreed, the promisee cannot claim compensation for any loss occasioned by the non-performance of the promise at the time agreed, unless, at the time of such acceptance he gives notice to the promisor of his intention to do so.[1]

Agreement to do impossible act.

56. An agreement to do an act impossible in itself is void.

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[1] *Cf.* ss. 62 and 63, *infra.*

(Chapter IV.—Of the Performance of Contracts.)

A contract to do an act which, after the contract is made, becomes impossible, or, by reason of some event which the promisor could not prevent, unlawful, becomes void when the act becomes impossible or unlawful.[1]

Contract to do act afterwards becoming impossible or unlawful.

Where one person has promised to do something which he knew, or, with reasonable diligence, might have known, and which the promise did not know to be impossible or unlawful, such promisor must make compensation to such promisee for any loss which such promisee sustains through the non-performance of the promise.

Compensation for loss through non-performance of act known to be impossible or unlawful.

Illustrations.

(*a*) A agrees with B to discover treasure by magic. The agreement is void.

(*b*) A and B contract to marry each other. Before the time fixed for the marriage, A goes mad. The contract becomes void.

(*c*) A contracts to marry B, being already married to C, and being forbidden by the law to which he is subject to practise polygamy A must make compensation to B for the loss caused to her by the non-performance of his promise.

(*d*) A contracts to take in cargo for B at a foreign port. A's Government afterwards declares war against the country in which the port is situated. The contract becomes void when war is declared.

(*e*) A contracts to act at a theatre for six months in consideration of a sum, paid in advance by B. On several occasions A is too ill to act. The contract to act on those occasions becomes void.

57. Where persons reciprocally promise firstly, to do certain things which are legal, and, secondly, under specified circumstances to do certain other things which are illegal, the first set of promises is a contract but the second is a void agreement.

Reciprocal promise to do things legal, and also other things illegal.

Illustration.

A and B agree that A shall sell B a house for 10 000 rupees, but that, if B uses it as a gambling house, he shall pay A 50 000 rupees for it.

The first set of reciprocal promises, namely, to sell the house and to pay 10,000 rupees for it, is a contract.

The second set is for an unlawful object, namely, that B may use the house as a gambling house, and is a void agreement.

58. In the case of an alternative promise, one branch of which is legal and the other illegal, the legal branch alone can be enforced.

Alternative promise, one branch being illegal.

Illustration.

A and B agree that A shall pay B 1,000 rupees for which B shall afterwards deliver to A either rice or smuggled opium.

This is a valid contract to deliver rice, and a void agreement as to the opium.

Appropriation of Payments.

59. Where a debtor, owing several distinct debts to one person, makes a payment to him, either with express intimation, or under circumstances

Application of payment where debt

[1] *See* s. 65, *infra* See also the Specific Relief Act, 1877 (1 of 1877), s. 13.

to be discharged is indicated.

implying that the payment is to be applied to the discharge of some particular debt, the payment, if accepted, must be applied accordingly.

Illustrations.

(*a*) A owes B, among other debts, 1,000 rupees upon a promissory note which falls due on the first June. He owes B no other debt of that amount. On the first June A pays to B 1,000 rupees. The payment is to be applied to the discharge of the promissory note.

(*b*) A owes to B, among other debts the sum of 567 rupees. B writes to A and demands payment of this sum. A sends to B 567 rupees. This payment is to be applied to the discharge of the debt of which B had demanded payment.

Application of payment where debt to be discharged is not indicated.

60. Where the debtor has omitted to intimate and there are no other circumstances indicating to which debt the payment is to be applied, the creditor may apply it at his discretion to any lawful debt actually due and payable to him from the debtor, whether its recovery is or is not barred by the law in force for the time being as to the limitation of suits.

Application of payment where neither party appropriates.

61. Where neither party makes any appropriation the payment shall be applied in discharge of the debts in order of time, whether they are or are not barred by the law in force for the time being as to the limitation of suits. If the debts are of equal standing, the payment shall be applied in discharge of each proportionably.

Contracts which need not be performed.

Effect of novation, rescission, and alteration of contract.

62. If the parties to a contract agree to substitute a new contract for it, or to rescind or alter it, the original contract need not be performed.

Illustrations.

(*a*) A owes money to B under a contract. It is agreed between A, B and C that B shall thenceforth accept C as his debtor, instead of A. The old debt of A to B is at an end, and a new debt from C to B has been contracted.

(*b*) A owes B 10,000 rupees. A enters into an arrangement with B, and gives B a mortgage of his (A's) estate for 5,000 rupees in place of the debt of 10,000 rupees. This is a new contract and extinguishes the old.

(*c*) A owes B 1,000 rupees under a contract. B owes C 1,000 rupees. B orders A to credit C with 1,000 rupees in his books, but C does not assent to the arrangement. B still owes C 1,000 rupees, and no new contract has been entered into.

Promisee may dispense with or remit performance of promise.

63. Every promisee may dispense with or remit, wholly or in part, the performance of the promise made to him, or may extend the time for such performance,[1] or may accept instead of it any satisfaction which he thinks fit.

[1] But *see* s. 135, *infra*.

(Chapter IV.—Of the Performance of Contracts.)

Illustrations.

(*a*) A promises to paint a picture for B. B afterwards forbids him to do so. A is no longer bound to perform the promise.

(*b*) A owes B 5,000 rupees. A pays to B, and B accepts, in satisfaction of the whole debt, 2,000 rupees paid at the time and place at which the 5,000 rupees were payable. The whole debt is discharged.

(*c*) A owes B 5,000 rupees. C pays to B 1,000 rupees, and B accepts them, in satisfaction of his claim on A. This payment is a discharge of the whole claim.[1]

(*d*) A owes B, under a contract, a sum of money, the amount of which has not been ascertained. A, without ascertaining the amount, gives to B, and B, in satisfaction thereof, accepts, the sum of 2,000 rupees. This is a discharge of the whole debt, whatever may be its amount.

(*e*) A owes B 2,000 rupees, and is also indebted to other creditors. A makes an arrangement with his creditors, including B, to pay them a [2][composition] of eight annas in the rupee upon their respective demands. Payment to B of 1,000 rupees is a discharge of B's demand.

Consequences of rescission of voidable contract.

64. When a person at whose option a contract is voidable rescinds it, the other party thereto need not perform any promise therein contained in which he is promisor. The party rescinding a voidable contract shall, if he have received any benefit thereunder from another party to such contract restore such benefit, so far as may be, to the person from whom it was received.[3]

Obligation of person who has received advantage under void agreement or contract that becomes void.

65. When an agreement is discovered to be void, or when a contract becomes void, any person who has received any advantage under such agreement or contract is bound to restore it, or to make compensation for it to the person from whom he received it.

Illustrations.

(*a*) A pays B 1,000 rupees in consideration of B's promising to marry C, A's daughter. C is dead at the time of the promise. The agreement is void, but B must repay A the 1,000 rupees.

(*b*) A contracts with B to deliver to him 250 maunds of rice before the first of May. A delivers 130 maunds only before that day, and none after. B retains the 130 maunds after the first of May. He is bound to pay A for them.

(*c*) A, a singer, contracts with B, the manager of a theatre, to sing at his theatre for two nights in every week during the next two months, and B engages to pay her a hundred rupees for each night's performance. On the sixth night, A wilfully absents herself from the theatre, and B, in consequence, rescinds the contract. B must pay A for the five nights on which she had sung.

(*d*) A contracts to sing for B at a concert for 1,000 rupees, which are paid in advance. A is too ill to sing. A is not bound to make compensation to B for the loss of the profits which B would have made if A had been able to sing, but must refund to B the 1,000 rupees paid in advance.

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[1] *See* s. 41, *supra*.

[2] Subs. by the Amending Act, 1891 (12 of 1891), s. 2 and Sch. II, for "compensation."

[3] *See* s. 75, *infra*.

(Chapter IV—of the Performance of Contracts. Chapter V.—Of certain Relations resembling those created by Contract.)

Mode of communicating or revoking rescission of voidable contract.

66. The rescission of a voidable contract may be communicated or revoked in the same manner, and subject to the same rules, as apply to the communication or revocation of a proposal.[1]

Effect of neglect of promisee to afford promisor reasonable facilities for performance.

67. If any promisee neglects or refuses to afford the promisor reasonable facilities for the performance of his promise, the promisor is excused by such neglect or refusal as to any non-performance caused thereby.

Illustration.

A contracts with B to repair B's house.

B neglects or refuses to point out to A the places in which his house requires repair.

A is excused for the non-performance of the contract if it is caused by such neglect or refusal.

CHAPTER V.

Of certain Relations resembling those created by Contract.

Claim for necessaries supplied to person incapable of contracting, or on his account.

68. If a person, incapable of entering into a contract, or any one whom he is legally bound to support, is supplied by another person with necessaries suited to his condition in life, the person who has furnished such supplies is entitled to be reimbursed from the property of such incapable person.[2]

Illustrations.

(*a*) A supplies B, a lunatic, with necessaries suitable to his condition in life. A is entitled to be reimbursed from B's property.

(*b*) A supplies the wife and children of B, a lunatic, with necessaries suitable to their condition in life. A is entitled to be reimbursed from B's property.

Reimbursement of person paying money due by another in payment of which he is interested.

69. A person who is interested in the payment of money which another is bound by law to pay, and who therefore pays it, is entitled to be reimbursed by the other.

Illustration.

B holds land in Bengal, on a lease granted by A, the zamindar. The revenue payable by A to the Government being in arrear, his land is advertised for sale by the Government. Under the revenue law, the consequence of such sale will be the annulment of B's lease. B, to prevent the sale and the consequent annulment of his own lease, pays to the Government the sum due from A. A is bound to make good to B the amount so paid.

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[1] *See* ss. 3 and 5, *supra*.

[2] The property of a Government ward in the C. P. is not liable under this section; *see* the C. P. Court of Wards Act, 1899 (24 of 1899), s. 31 (*1*).

(Chapter V.—Of certain Relations resembling those created by Contract.
Chapter VI.—Of the Consequences of Breach of Contract.)

70. Where a person lawfully does anything for another person, or delivers anything to him, not intending to do so gratuitously, and such other person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of, or to restore, the thing so done or delivered.[1]

Obligation of person enjoying benefit of non-gratuitous act.

Illustrations.

(*a*) A, a tradesman, leaves goods at B's house by mistake. B treats the goods as his own. He is bound to pay A for them.

(*b*) A saves B's property from fire. A is not entitled to compensation from B, if the circumstances show that he intended to act gratuitously.

71. A person who finds goods belonging to another and takes them into his custody, is subject to the same responsibility as a bailee.[2]

Responsibility of finder of goods.

72. A person to whom money has been paid, or anything delivered, by mistake or under coercion, must repay or return it.

Liability of person to whom money is paid or thing delivered by mistake or under coercion.

Illustrations.

(*a*) A and B jointly owe 100 rupees to C. A alone pays the amount to C, and B, not knowing this fact, pays 100 rupees over again to C. C is bound to repay the amount to B.

(*b*) A railway company refuses to deliver up certain goods to the consignee, except upon the payment of an illegal charge for carriage. The consignee pays the sum charged in order to obtain the goods. He is entitled to recover so much of the charge as was illegally excessive.

CHAPTER VI.

OF THE CONSEQUENCES OF BREACH OF CONTRACT.

73. When a contract has been broken, the party who suffers by such breach is entitled to receive, from the party who has broken the contract, compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things from such breach, or which the parties knew, when they made the contract, to be likely to result from the breach of it.

Compensation for loss or damage caused by breach of contract.

Such compensation is not to be given for any remote and indirect loss or damage sustained by reason of the breach.

When an obligation resembling those created by contract has been incurred and has not been discharged, any person injured by the failure to discharge

Compensation for failure to discharge obligation

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[1] As to suits by minors under s. 70 in Presidency Small Cause Courts, *see* the Presidency Small Cause Courts Act, 1882 (15 of 1882). s. 32.

[2] *See ss.* 151 and 152, *infra.*

resembling those created by contract.

it is entitled to receive the same compensation from the party in default, as if such person had contracted to discharge it and had broken his contract.

Explanation.—In estimating the loss or damage arising from a breach of contract, the means which existed of remedying the inconvenience caused by the non-performance of the contract must be taken into account.

Illustrations.

(*a*) A contracts to sell and deliver 50 maunds of saltpetre to B, at a certain price to be paid on delivery. A breaks his promise. B is entitled to receive from A, by way of compensation, the sum, if any, by which the contract price falls short of the price for which B might have obtained 50 maunds of saltpetre of like quality at the time when the saltpetre ought to have been delivered.

(*b*) A hires B's ship to go to Bombay, and there take on board, on the first of January, a cargo which A is to provide and to bring it to Calcutta, the freight to be paid when earned. B's ship does not go to Bombay, but A has opportunities of procuring suitable conveyance for the cargo upon terms as advantageous as those on which he had chartered the ship. A avails himself of those opportunities, but is put to trouble and expense in doing so. A is entitled to receive compensation from B in respect of such trouble and expense.

(*c*) A contracts to buy of B, at a stated price, 50 maunds of rice, no time being fixed for delivery, A afterwards informs B that he will not accept the rice if tendered to him. B is entitled to receive from A, by way of compensation, the amount, if any, by which the contract price exceeds that which B can obtain for the rice at the time when A informs B that he will not accept it.

(*d*) A contracts to buy B's ship for 60,000 rupees, but breaks his promise. A must pay to B, by way of compensation, the excess, if any, of the contract price over the price which B can obtain for ship at the time of the breach of promise.

(*e*) A, the owner of a boat, contracts with B to take a cargo of jute to Mirzapur, for sale at that place, starting on a specified day. The boat, owing to some avoidable cause, does not start at the time appointed, whereby the arrival of the cargo at Mirzapur is delayed beyond the time when it would have arrived if the boat had sailed according to the contract. After that date, and before the arrival of the cargo, the price of jute falls. The measure of the compensation payable to B by A is the difference between the price which B could have obtained for the cargo at Mirzapur at the time when it would have arrived if forwarded in due course, and its market price at the time when it actually arrived.

(*f*) A contracts to repair B's house in a certain manner, and receives payment in advance. A repairs the house, but not according to contract. B is entitled to recover from A the cost of making the repairs conform to the contract.

(*g*) A contracts to let his ship B for a year, from the first of January, for a certain price. Freights rise, and, on the first of January, the hire obtainable for the ship is higher than the contract price. A breaks his promise. He must pay to B, by way of compensation, a sum equal to the difference between the contract price and the price for which B could hire a similar ship for a year on and from the first of January.

(*h*) A contracts to supply B with a certain quantity of iron at a fixed price, being a higher price than that for which A could procure and deliver the iron. B wrongfully refuses to receive the iron. B must pay to A, by way of compensation, the difference between the contract price of the iron and the sum for which A could have obtained and delivered it.

(*i*) A delivers to B, a common carrier, a machine, to be conveyed, without delay, to A's mill informing B that his mill is stopped for want of the machine. B unreasonably delays the delivery of the machine, and A, in consequence, loses a profitable contract with the Government. A is entitled to receive from B, by way of compensation, the average amount of profit which would have been made by the working of the

mill during the time that delivery of it was delayed, but not the loss sustained through the loss of the Government contract.

(*j*) A, having contracted with B to supply B with 1,000 tons of iron at 100 rupees a ton, to be delivered at a stated time, contracts with C for the purchase of 1,000 tons of iron at 80 rupees a ton, telling C that he does so for the purpose of performing his contract with B. C fails to perform his contract with A, who cannot procure other iron, and B, in consequence, rescinds the contract. C must pay to A 20,000 rupees, being the profit which A would have made by the performance of his contract with B.

(*k*) A contracts with B to make and deliver to B, by a fixed day, for a specified price, a certain piece of machinery. A does not deliver the piece of machinery at the time specified, and in consequence of this, B is obliged to procure another at a higher price than that which he was to have paid to A, and is prevented from perfoming a contract which B had made with a third person at the time of his contract with A (but which had not been then communicated to A), and is compelled to make compensation for breach of that contract. A must pay to B, by way of compensation, the difference between the contract price of the piece of machinery and the sum paid by B for another, but not the sum paid by B to the third person by way of compensation.

(*l*) A, a builder, contracts to erect and finish a house by the first of January, in order that B may give possession of it at that time to C, to whom B has contracted to let it. A is informed of the contract between B and C. A build the house so badly that, before the first of January, it falls down and has to be re-built by B, who, in consequence, loses the rent which he was to have received from C, and is obliged to make compensation to C for the breach of his contract. A must make compensation to B for the cost of rebuilding the house, for the rent lost, and for the compensation made to C.

(*m*) A sells certain merchandise to B, warranting it to be of a particular quality, and B, in reliance upon this warranty, sells it to C with a similar warranty. The goods prove to be not according to the warranty, and B becomes liable to pay C a sum of money by way of compensation. B is entitled to be reimbursed this sum by A.

(*n*) A contracts to pay a sum of money to B on a day specified. A does not pay the money on that day; B, in consequence of not receiving the money on that day, is unable to pay his debts, and is totally ruined. A is not liable to make good to B anything except the principal sum he contracted to pay, together with interest up to the day of payment.

(*o*) A contracts to deliver 50 maunds of saltpetre to B on the first of January, at a certain price. B afterwards, before the first of January, contracts to sell the saltpetre to C at a price higher than the market price of the first of January. A breaks his promise. In estimating the compensation payable by A to B, the market price of the first of January, and not the profit which would have arisen to B from the sale to C, is to be taken into account.

(*p*) A contracts to sell and deliver 500 bales of cotton to B on a fixed day. A knows nothing of B's mode of conducting his business. A breaks his promise, and B, having no cotton, is obliged to close his mill. A is not responsible to B for the loss caused to B by the closing of the mill.

(*q*) A contracts to sell and deliver to B, on the first of January certain cloth which B intends to manufacture into caps of a particular kind, for which there is no demand, except at that season. The cloth is not delivered till after the appointed time, and too late to be used that year in making caps. B is entitled to receive from A by way of compensation, the difference between the contract price of the cloth and its market price at the time of delivery, but not the profits which he expected to obtain by making caps, nor the expenses which he has been put to in making preparation for the manufacture.

(*r*) A, a ship-owner, contracts with B to convey him from Calcutta to Sydney in A's ship, sailing on the first of January, and B pays to A, by way of deposit, one-half of his passage-money. The ship does not sail on the first of January, and B, after being in consequence detained in Calcutta for some time and thereby put

to some expense, proceeds to Sydney in another vessel, and, in consequence, arriving too late in Sydney, loses a sum of money. A is liable to repay to B his deposit with interest, and the expense to which he is put by his detention in Calcutta, and the excess, if any, of the passage-money paid for the second ship over that agreed upon for the first, but not the sum of money which B lost by arriving in Sydney too late.

Compensation for breach of contract where penalty stipulated for.

74. [1][When a contract has been broken, if a sum is named in the contract as the amount to be paid in case of such breach, or if the contract contains any other stipulation by way of penalty, the party complaining of the breach is entitled, whether or not actual damage or loss is proved to have been caused thereby, to receive from the party who has broken the contract reasonable compensation not exceeding the amount so named or, as the case may be, the penalty stipulated for.

Explanation.—A stipulation for increased interest from the date of default may be a stipulation by way of penalty.]

Exception.—When any person enters into any bail-bond, recognizance or other instrument of the same nature, or, under the provisions of any law, or under the orders of the [2][Central Government] or of any [3][State Government], gives any bond for the performance of any public duty or act in which the public are interested, he shall be liable, upon breach of the condition of any such instrument, to pay the whole sum mentioned therein.

Explanation.—A person who enters into a contract with Government does not necessarily thereby undertake any public duty, or promise to do an act in which the public are interested.

Illustrations.

(*a*) A contracts with B to pay B Rs. 1,000, if he fails to pay B Rs. 500 on a given day. A fails to pay B Rs. 500 on that day. A is entitled to recover from A such compensation, not exceeding Rs. 1,000 as the Court considers reasonable.

(*b*) A contracts with B that, if A practises as a surgeon within Calcutta, he will pay B Rs. 5,000. A practises as a surgeon in Calcutta. B is entitled to such compensation, not exceeding Rs. 5,000, as the Court considers reasonable.

(*c*)) A gives a recognizance binding him in a penalty of Rs. 500 to appear in Court on a certain day. He forfeits his recognizance. He is liable to pay the whole penalty.

[4] [(*d*) A gives B a bond for the repayment of Rs. 1,000 with interest at 12 per cent, at the end of six months, with a stipulation that in case of default, interest shall be payable at the rate of 75 per cent. from the date of default. This is a stipulation by way of penalty, and B is only entitled to recover from A such compensation as the Court considers reasonable.]

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[1] Subs. by the Indian Contract Act Amendment Act, 1899 (6 of 1899), s 4, for the first para of s. 74.

[2] Subs. by the A. O. 1937 for "G. of I."

[3] Subs. by the A. O. 1950 for "Provincial Government" which had been Subs. by the A. O. 1937 for "L. G."

[4] Ins. by Act 6 of 1899, s. 4(2).

(Chapter VI.—Of the Consequences of Breach of Contract. Chapter VII.—Sale of Goods. Chapter VIII.—Of Indemnity and Guarantee.)

[1] [(e) A, who owes money to B, a money-lender, undertakes to repay him by delivering to him 10 maunds of grain on a certain date, and stipulates that, in the event of his not delivering the stipulated amount by the stipulated date, he shall be liable to deliver 20 maunds. This is a stipulation by way of penalty, and B is only entitled to reasonable compensation is case of breach.]

[1] [(f) A undertakes to repay B a loan of Rs. 1,000 by five equal monthly instalments with a stipulation that, in default of payment of any instalment, the whole shall become due. This stipulation is not by way of penalty, and the contract may be enforced according to its terms.]

[1] [(g) A borrows Rs. 100 from B and gives him a bond for Rs. 200 payable by five yearly instalments of Rs. 40, with a stipulation that, in default of payment of any instalment, the whole shall become due. This is a stipulation by way of penalty.]

75. A person who rightly rescinds a contract is entitled to compensation for any damage which he has sustained through the non-fulfilment of the contract. Party rightfully rescinding contract entitled to compensation.

Illustration.

A, a singer, contracts with B, the manager of a theatre, to sing at his theatre for two nights in every week during the next two months, and B engages to pay her 100 rupees for each night's performance. On the sixth night, A wilfully absents herself from the theatre, and B, in consequence, rescinds the contract. B is entitled to claim compensation for the damage which he has sustained through the non-fulfilment of the contract.

CHAPTER VII.—[Sale of Goods.] Rep. by the Indian Sale of Goods Act, 1930 (III of 1930), s. 56.

CHAPTER VIII.

OF INDEMNITY AND GUARANTEE.

124. A contract by which one party promises to save the other from loss caused to him by the conduct of the promisor himself, or by the conduct of any other person, is called a "contract of indemnity." "Contract of indemnity" defined.

Illustration.

A contracts to indemnify B against the consequences of any proceedings which C may take against B in respect of a certain sum of 200 rupees. This is a contract of idemnity.

125. The promisee in a contract of indemnity, acting within the scope of his authority, is entitled to recover from the promisor— Rights of indemnity-holder when sued.

(1) all damages which he may be compelled to pay in any suit in respect of any matter to which the promise to idemnify applies;

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[1] Ins. by the Indian Contract Act Amendment Act, 1899 (6 of 1899), s. 4 (2).

(2) all costs which he may be compelled to pay in any such suit if, in bringing or defending it, he did not contravene the orders of the promisor, and acted as it would have been prudent for him to act in the absence of any contract of indemnity, or if the promisor authorized him to bring or defend the suit;

(3) all sums which he may have paid under the terms of any compromise of any such suit, if the compromise was not contrary to the orders of the promisor, and was one which it would have been prudent for the promisee to make in the absence of any contract of indemnity, or if the promisor authorized him to compromise the suit.

"Contract of guarantee", "surety", "principal debtor" and "creditor"

126. A "contract of guarantee" is a contract to perform the promise, or discharge the liability, of a third person in case of his default. The person who gives the guarantee is called the "surety" : the person in respect of whose default the guarantee is given is called the "principal debtor," and the person to whom the guarantee is given is called the "creditor." A guarantee may be either oral or written.

Consideration for guarantee

127. Anything done, or any promise made, for the benefit of the principal debtor may be a sufficient consideration to the surety for giving the guarantee.

Illustrations.

(*a*) B requests A to sell and deliver to him goods on credit. A agrees to do so, provided C will guarantee the payment of the price of the goods. C promises to guarantee the payment in consideration of A's promise to deliver the goods. This is a sufficient consideration for C's promise.

(*b*) A sells and delivers goods to B. C afterwards requests A to forbear to sue B for the debt for a year, and promises that if he does so, C will pay for them in default of payment by B. A agrees to forbear as requested. This is a sufficient consideration for C's promise.

(*c*) A sells and delivers goods to B. C afterwards, without consideration agrees to pay for them in default of B. The agreement is void.

Surety's liability.

128. The liability of the surety is co-extensive with that of the principal debtor, unless it is otherwise provided by the contract.

Illustration.

A guarantees to B the payment of a bill of exchange by C, the acceptor. The bill is dishonoured by C. A is liable not only for the amount of the bill but also for any interest and charges which may have become due on it.

"Continuing guarantee."

129. A guarantee which extends to a series of transactions is called a "continuing guarantee."

Illustrations.

(*a*) A, in consideration that B will employ C in collecting the rent of B's zamindari, promises B to be responsible, to the amount of 5,000 rupees, for the due collection and payment by C of those rents. This is a continuing guarantee.

(*b*) A guarantees payment to B, a tea-dealer, to the amount of £100, for any tea he may from time to time supply to C. B supplies C with tea to above the value of £100, and C pays B for it. Afterwards B supplies C with tea to the value of £200. C fails to pay. The guarantee given by A was a continuing guarantee, and he is accordingly liable to B to the extent of £100.

(*c*) A guarantees payment to B of the price of five sacks of flour to be delivered by B to C and to be paid for in a month. B delivers five sacks to C. C pays for them. Afterwards B delivers four sacks to C, which C does not pay for. The guarantee given by A was not a continuing guarantee, and accordingly he is not liable for the price of the four sacks.

Revocation of continuing guarantee.

130. A continuing guarantee may at any time be revoked by the surety, as to future transactions, by notice to the creditor.

Illustrations.

(*a*) A, is consideration of B's discounting, at A's request, bills of exchange for C, guarantees to B, for twelve months, the due payment of all such bills to the extent of 5,000 rupees. B discounts bills for C to the extent of 2,000 rupees. Afterwards, at the end of three months, A revokes the guarantee. This revocation discharges A from all liability to B for any subsequent discount. But A is liable to B for the 2,000 rupees, on default of C.

(*b*) A guarantees to B, to the extent of 10,000 rupees, that C shall pay all the bills that B shall draw upon him. B draws upon C. C accepts the bill. A gives notice of revocation. C dishonours the bill at maturity. A is liable upon his guarantee.

Revocation of continuing guarantee by surety's death.

131. The death of the surety operates, in the absence of any contract to the contrary, as a revocation of a continuing guarantee, so far as regards future transactions.

Liability of two persons primarily liable, not affected by arrangement between them that one shall be surety on other's default.

132. Where two persons contract with a third person to undertake a certain liability, and also contract with each other that one of them shall be liable only on the default of the other, the third person not being a party to such contract, the liability of each of such two persons to the third person under the first contract is not affected by the existence of the second contract, although such third person may have been aware of its existence.

Illustration.

A and B make a joint and several promissory note to C. A makes it, in fact, as surety for B, and C knows this at the time when the note is made. The fact that A, to the knowledge of C, made the note as surety for B, is no answer to a suit by C against A upon the note.

Discharge of surety by variance in terms of contract.

133. Any variance, made without the surety's consent, in the terms of the contract between the principal [1][debtor] and the creditor, discharges the surety as to transactions subsequent to the variance.

Illustrations.

(*a*) A becomes surety to C for B's conduct as a manager in C's bank. Afterwards, B and C contract, without A's consent, that B's salary shall be raised, and

[1] Ins. by the Repealing and Amending Act, 1917 (24 of 1917), s. 2 and Sch. I.

that he shall become liable for one-fourth of the losses on overdrafts. B allows a customer to overdraw, and the bank loses a sum of money. A is discharged from his suretyship by the variance made without his consent, and is not liable to make good this loss.

(*b*) A guarantees C against the misconduct of B in an office to which B is appointed by C, and of which the duties are defined by an Act of the Legislature. By a subsequent Act, the nature of the office is materially altered. Afterwards, B misconducts himself. A is discharged by the change from future liability under his guarantee, though the misconduct of B is in respect of a duty not affected by the later Act.

(*c*) C agrees to appoint B as his clerk to sell goods at a yearly salary, upon A's becoming surety to C for B's duly accounting for moneys received by him as such clerk. Afterwards, without A's knowledge or consent, C and B agree that B should be paid by a commission on the goods sold by him and not by a fixed salary. A is not liable for subsequent misconduct of B.

(*d*) A gives to C a continuing guarantee to the extent of 3,000 rupees for any oil supplied by C to B on credit. Afterwards B becomes embarrassed, and, without the knowledge of A, B and C contract that C shall continue to supply B with oil for ready money, and that the payments shall be applied to the then existing debts between B and C. A is not liable on his guarantee for any goods supplied after this new arrangement.

(*e*) C contracts to lend B 5,000 rupees on the 1st March. A guarantees repayment. C pays the 5,000 rupees to B on the 1st January. A is discharged from his liability, as the contract has been varied inasmuch as C might sue B for the money before the 1st of March.

Discharge of surety by release or discharge of principal debtor.

134. The surety is discharged by any contract between the creditor and the principal debtor, by which the principal debtor is released or by any act or omission of the creditor, the legal consequence of which is the discharge of the principal debtor.

Illustrations.

(*a*) A gives a guarantee to C for goods to be supplied by C to B. C supplies goods to B, and afterwards B becomes embarrassed and contracts with his creditors (including C) to assign to them his property in consideration of their releasing him from their demands. Here B is released from his debt by the contract with C, and A is discharged from his suretyship.

(*b*) A contracts with B to grow a crop of indigo on A's land and to deliver it to B at a fixed rate, and C guarantees A's performance of this contract. B diverts a stream of water which is necessary for irrigation of A's land and thereby prevents him from raising the indigo. C is no longer liable on his guarantee.

(*c*) A contracts with B for a fixed price to build a house for B within a stipulated time, B supplying the necessary timber. C guarantees A's performance of the contract. B omits to supply the timber. C is discharged from his suretyship.

Discharge of surety when creditor compounds with, gives time to, or agrees not to sue, principal debtor.

135. A contract between the creditor and the principal debtor, by which the creditor makes a composition with, or promises to give time to, or not to sue, the principal debtor discharges the surety, unless the surety assents to such contract.

(Chapter VIII.—Of Indemnity and Guarantee.)

136. Where a contract to give time to the principal debter is made by the creditor with a third person, and not with the principal debtor, the surety is not discharged.

Surety not discharged when agreement made with third person to give time to principal debtor.

Illustration.

C, the holder of an overdue bill of exchange drawn by A as surety for B, and accepted by B, contracts with M to give time to B. A is not discharged.

137. Mere forbearance on the part of the creditor to sue the principal debtor or to enforce any other remedy against him does not, in the absence of any provision in the guarantee to the contrary, discharge the surety.

Creditor's forbearance to sue does not discharge surety.

Illustration.

B owes to C a debt guaranteed by A. The debt becomes payable. C does not sue B for a year after the debt has become payable. A is not discharged from his suretyship.

138. Where there are co-sureties, a release by the creditor of one of them does not discharge the others; neither does it free the surety so released from his responsibility to the other sureties[1].

Release of one co-surety does not discharge others.

139. If the creditor does any act which is inconsistent with the rights of the surety, or omits to do any act which his duty to the surety requires him to do, and the eventual remedy of the surety himself against the principal debtor is thereby impaired, the surety is discharged.

Discharge of surety by creditor's act or omission impairing surety's eventual remedy.

Illustrations.

(*a*) B contracts to build a ship for C for a given sum, to be paid by instalments as the work reaches certain stages. A becomes surety to C for B's due performance of the contract. C, without the knowledge of A, prepays to B the last two instalments. A is discharged by this prepayment.

(*b*) C lends money to B on the security of a joint and several promissory note made in C's favour by B, and by A as surety for B, together with a bill of sale of B's furniture, which gives power to C to sell the furniture, and apply the proceeds in discharge of the note. Subsequently, C sells the furniture, but, owing to his misconduct and wilful negligence, only a small price is realized. A is discharged from liability on the note.

(*c*) A puts M as apprentice to B, and gives a guarantee to B for M's fidelity. B promises on his part that he will, at least once a month, see M make up the cash. B omits to see this done as promised, and M embezzles. A is not liable to B on his guarantee.

140. Where a guaranteed debt has become due, or default of the principal debtor to perform a guaranteed duty has taken place, the surety, upon payment or performance of all that he is liable for, is invested with all the rights which the creditor had against the principal debtor.

Rights of surety on payment or performance.

141. A surety is entitled to the benefit of every security which the creditor has against the principal debtor at the time when the contract of

Surety's right to benefit of

[1] *See* s. 44, *supra*.

creditor's securities.

suretyship is entered into, whether the surety knows of the existence of such security or not; and, if the creditor loses, or, without the consent of the surety, parts with such security, the surety is discharged to the extent of the value of the security.

Illustrations.

(*a*) C advances to B, his tenant, 2,000 rupees on the guarantee of A. C has also a further security for the 2,000 rupees by a mortgage of B's furniture. C cancels the mortgage. B becomes insolvent, and C sues A on his guarantee. A is discharged from liability to the amount of the value of the furniture.

(*b*) C, a creditor, whose advance to B is secured by a decree, receives also a guarantee for that advance from A. C afterwards takes B's goods in execution under the decree, and then, without the knowledge of A, withdraws the execution. A is discharged.

(*c*) A, as surety for B, makes a bond jointly with B to C, to secure a loan from C to B. Afterwards, C obtains from B a further security for the same debt. Subsequently, C gives up the further security. A is not discharged.

Guarantee obtained by misrepresentation invalid.

142. Any guarantee which has been obtained by means of misrepresentation made by the creditor, or with his knowledge and assent, concerning a material part of the transaction, is invalid.

Guarantee obtained by concealment invalid.

143. Any guarantee which the creditor has obtained by means of keeping silence as to material circumstances is invalid.

Illustrations.

(*a*) A engages B as clerk to collect money for him. B fails to account for some of his receipts, and A in consequence calls upon him to furnish security for his duly accounting. C gives his guarantee for B's duly accounting. A does not acquired C with B's previous conduct. B afterwards makes default. The guarantee is invalid.

(*b*) A guarantees to C payment for iron to be supplied by him to B to the amount of 2,000 tons. B and C have privately agreed that B should pay five rupees per ton beyond the market price, such excess to be applied in liquidation of an old debt. This agreement is concealed from A. A is not liable as a surety.

Guarantee on contract that creditor shall not act on it until co-surety joins.

144. Where a person gives a guarantee upon a contract that the creditor shall not act upon it until another person has joined in it as co-surety, the guarantee is not valid if that other person does not join.

Implied promise to indemnify surety.

145. In every contract of guarantee there is an implied promise by the principal debtor to indemnify the surety; and the surety is entitled to recover from the principal debtor whatever sum he has rightfully paid under the guarantee, but no sums which he has paid wrongfully.

Illustrations.

(*a*) B is indebted to C, and A is surety for the debt. C demands payment from A, and on his refusal sues him for the amount. A defends the suit, having reasonable grounds for doing so, but is compelled to pay the amount of the debt with costs. He can recover from B the amount paid by him for costs, as well as the principal debt.

(*b*) C lends B a sum of money, and A, at the request of B, accepts a bill of exchange drawn by B upon A to secure the amount. C, the holder of the bill, demands payment of it from A, and, on A's refusal to pay, sues him upon the bill. A, not having reasonable grounds for so doing, defends the suit, and has to pay the amount of the bill and costs. He can recover from B the amount of the bill, but not the sum paid for costs, as there was no real ground for defending the action.

(*c*) A guarantees to C, to the extent of 2,000 rupees, payment for rice to be supplied by C to B. C supplies to B rice to a less amount than 2,000 rupees, but obtains from A payment of the sum of 2,000 rupees in respect of the rice supplied. A cannot recover from B more than the price of the rice actually supplied.

Co-sureties liable to contribute equally.

146. Where two or more persons are co-sureties for the same debt or duty, either jointly or severally, and whether under the same or different contracts, and whether with or without the knowledge of each other, the co-sureties, in the absence of any contract to the contrary, are liable, as between themselves, to pay each an equal share of the whole debt, or of that part of it which remains unpaid by the principal debtor[1].

Illustrations.

(*a*) A, B and C are sureties to D for the sum of 3,000 rupees lent to E. E makes default in payment. A, B and C are liable, as between themselves, to pay 1,000 rupees each.

(*b*) A, B and C are sureties to D for the sum of 1,000 rupees lent to E, and there is a contract between A, B and C that A is to be responsible to the extent of one-quarter, B to the extent of one-quarter and C to the extent of one-half. E makes default in payment. As between the sureties, A is liable to pay 250 rupees, B 250 rupees, and C 500 rupees.

Liability of co-sureties bound in different sums.

147. Co-sureties who are bound in different sums are liable to pay equally as far as the limits of their respective obligations permit.

Illustrations.

(*a*) A, B and C, as sureties for D, enter into three several bonds, each in a different penalty, namely, A in the penalty of 10,000 rupees, B in that of 20,000 rupees, C in that of 40,000 rupees, conditioned for D's duly accounting to E. D makes default to the extent of 30,000 rupees. A, B and C are liable to pay 10,000 rupees.

(*b*) A, B and C, as sureties for D, enter into three several bonds, each in a different penalty, namely, A in the penalty of 10,000 rupees, B in that of 20,000 rupees, C in that of 40,000 rupees, conditioned for D's duly accounting to E. D makes default to the extent of 40,000 rupees. A is liable to pay 10,000 rupees, and B and C 15,000 rupees each.

(*c*) A, B and C, as sureties for D, enter into three several bonds, each in a different penalty, namely, A in the penalty of 10,000 rupees, B in that of 20,000 rupees, C in that of 40,000 rupees, conditioned for D's duly accounting to E. D makes default to the extent of 70,000 rupees. A, B and C have to pay each the full penalty of his bond.

CHAPTER IX.

OF BAILMENT.

"Bailment", "bailor", and "bailee" defined.

148. A "bailment" is the delivery of goods by one person to another for some purpose, upon a contract that they shall, when the purpose is accomplished, be returned or otherwise disposed of according to the directions of the person delivering them. The person delivering the goods is called the "bailor." The person to whom they are delivered is called the "bailee."

[1] *See* s. 43, *supra*.

Explanation.—If a person already in possession of the goods of another contracts to hold them as a bailee, he thereby becomes the bailee, and the owner becomes the bailor, of such goods although they may not have been delivered by way of bailment.

Delivery to bailee how made.

149. The delivery to the bailee may be made by doing anything which has the effect of putting the goods in the possession of the intended bailee or of any person authorized to hold them on his behalf.

Bailor's duty to disclose faults in goods bailed.

150. The bailor is bound to disclose to the bailee faults in the goods bailed, of which the bailor is aware, and which materially interfere with the use of them, or expose the bailee to extraordinary risks; and if he does not make such disclosure, he is responsible for damage arising to the bailee directly from such faults.

If the goods are bailed for hire, the bailor is responsible for such damage, whether he was or was not aware of the existence of such faults in the goods bailed.

Illustrations.

(*a*) A lends a horse, which he knows to be vicious, to B. He does not disclose the fact that the horse is vicious. The horse runs away. B is thrown and injured. A is responsible to B for damage sustained.

(*b*) A hires a carriage of B. The carriage is unsafe, though B is not aware of it, and A is injured. B is responsible to A for the injury.

Care to be taken by bailee.

[1]**151.** In all cases of bailment the bailee is bound to take as much care of the goods bailed to him as a man of ordinary prudence would, under similar circumstances, take of his own goods of the same bulk, quality and value as the goods bailed[2].

Bailee when not liable for loss, etc., of thing bailed

[1]**152.** The bailee, in the absence of any special contract, is not responsible for the loss, destruction or deterioration of the thing bailed, if he has taken the amount of care of it described in section 151.

Termination of bailment by bailee's act inconsistent with conditions.

153. A contract of bailment is avoidable at the option of the bailor, if the bailee does any act with regard to the goods bailed, inconsistent with the conditions of the bailment.

Illustration

A lets to B, for hire a horse for his own riding. B drives the horse in his carriage. This is, at the option of A, a termination of the bailment.

Liability of bailee

154. If the bailee makes any use of the goods bailed, which is not according to the conditions of the bailment, he is liable to make compensation

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[1] The responsibility of the Trustees of the Port of Madras constituted under the Madras Port Trust Act, 1905 (Mad. 2 of 1905), in regard to goods has been declared to be that of a bailee, under these sections, without the qualifying words "in the absence of any special contract" in s. 152, *see* s. 40 (*1*) of that Act.

[2] As to railway contracts, *see* the Indian Railways Act, 1890 (9 of 1890), s. 72. As to the liability of common carriers, *see* the Carries Act, 1865 (3 of 1865), s. 8.

to the bailor for any damage arising to the goods from or during such use of them.

making unauthorised use of goods bailed.

Illustrations.

(*a*) A lends a horse to B for his own riding only. B allows C, a member of his family, to ride the horse. C rides with care, but the horse accidentally falls and is injured. B is liable to make compensation to A for the injury done to the horse.

(*b*) A hires a horse in Calcutta from B expressly to march to Benares. A rides with due care, but marches to Cuttack instead. The horse accidentally falls and is injured. A is liable to make compensation to B for the injury to the horse.

155. If the bailee, with the consent of the bailor, mixes the goods of the bailor with his own goods, the bailor and the bailee shall have an interest, in proportion to their respective shares, in the mixture thus produced.

Effect of mixture, with bailor's consent, of his goods with bailee's.

156. If the bailee, without the consent of the bailor, mixes the goods of the bailor with his own goods, and the goods can be separated or divided, the property in the goods remains in the parties respectively; but the bailee is bound to bear the expense of separation or division, and any damage arising from the mixture.

Effect of mixture, without bailor's consent, when the goods can be separated.

Illustration.

A bails 100 bales of cotton marked with a particular mark to B. B, without A's consent, mixes the 100 bales with other bales of his own, bearing a different mark. A is entitled to have his 100 bales returned, and B is bound to bear all the expense incurred in the separation of the bales, and any other incidental damage.

157. If the bailee, without the consent of the bailor, mixes the goods of the bailor with his own goods, in such a manner that it is impossible to separate the goods bailed from the other goods and deliver them back, the bailor is entitled to be compensated by bailee for the loss of the goods.

Effect of mixture, without bailor's consent, when the goods cannot be separated.

Illustration.

A bails a barrel of Cape flour worth Rs. 45 to B. B, without A's consent, mixes the flour with country flour of his own, worth only Rs. 25 a barrel. B must compensate A for the loss of his flour.

158. Where, by the conditions of the bailment, the goods are to be kept or to be carried, or to have work done upon them by the bailee for the bailor, and the bailee is to receive no remuneration, the bailor shall repay to the bailee the necessary expenses incurred by him for the purpose of the bailment.

Repayment by bailor of necessary expenses.

159. The lender of a thing for use may at any time require its return, if the loan was gratuitous, even though he lent it for a specified time or purpose. But, if, on the faith of such loan made for a specified time or purpose, the borrower has acted in such a manner that the return of the thing let before the time agreed upon would cause him loss exceeding the benefit actually derived by him from the loan, the lender must, if he compels

Restoration of goods, lent gratuitously.

the return, indemnify the borrower for the amount in which the loss so occasioned exceeds the benefit so derived.

Return of goods bailed on expiration of time or accomplishment of purpose.

160. It is the duty of the bailee to return, or deliver according to the bailor's directions, the goods bailed, without demand, as soon as the time for which they were bailed has expired, or the purpose for which they were bailed has been accomplished.

Bailee's responsibility when goods are not duly returned.

[1]**161.** If, by the default of the bailee, the goods are not returned, delivered or tendered at the proper time, he is responsible to the bailor for any loss, destruction or deterioration of the goods from that time[2].

Termination of gratuitous bailment by death.

162. A gratuitous bailment is terminated by the death either of the bailor or of the bailee.

Bailor entitled to increase or profit from goods bailed.

163. In the absence of any contract to the contrary, the bailee is bound to deliver to the bailor, or according to his directions, any increase or profit which may have accrued from the goods bailed.

Illustration.

A leaves a cow in the custody of B to be taken care of. The cow has a calf. B is bound to deliver the calf as well as the cow to A.

Bailor's responsibility to bailee.

164. The bailor is responsible to the bailee for any loss which the bailee may sustain by reason that the bailor was not entitled to make the bailment, or to receive back the goods or to give directions, respecting them.

Bailment by several joint owners.

165. If several joint owners of goods bail them, the bailee may deliver them back to, or according to the directions of, one joint owner without the consent of all, in the absence of any agreement to the contrary.

Bailee not responsible on re-delivery to without title.

166. If the bailor has no title to the goods, and the bailee, in good faith, delivers them back to, or according to the directions of, the bailor, the bailee is not responsible to the owner in respect of such delivery[3].

Right of third person claiming goods bailed.

167. If a person, other than the bailor, claims goods bailed, he may apply to the Court to stop the delivery of the goods to the bailor, and to decide the title to the goods.

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[1] S. 161 has been declared to apply to the responsibility of the Trustees of the Port of Madras as to goods in their possession, *see* the Madras Port Trust Act, 1905 (Mad. 2 of 1905).

[2] As to railway contracts, *see* the Indian Railways Act, 1890 (9 of 1890), s. 72.

[3] *See* the Indian Evidence Act, 1872 (I of 1872), s. 117.

168. The finder of goods has no right to sue the owner for compensation for trouble and expense voluntarily incurred by him to preserve the goods and to find out the owner; but he may retain the goods against the owner until he receives such compensation; and, where the owner has offered a specific reward for the return of goods lost, the finder may sue for such reward, and may retain the goods until he receives it.

Right of finder of goods to sue for specific reward offered.

169. When a thing which is commonly the subject of sale is lost, if the owner cannot with reasonable diligence be found, or if he refuses, upon demand, to pay the lawful charges of the finder, the finder may sell it—

When finder of thing commonly on sale may sell it.

(1) when the thing is in danger of perishing or of losing the greater part of its value, or,

(2) when the lawful charges of the finder, in respect of the thing found, amount to two-thirds of its value.

170. Where the bailee has, in accordance with the purpose of the bailment, rendered any service involving the exercise of labour or skill in respect of the goods bailed, he has, in the absence of a contract to the contrary, a right to retain such goods until he receives due remuneration for the services he has rendered in respect of them

Bailee's particular lien.

Illustrations.

(*a*) A delivers a rough diamond to B, a jeweller, to be cut and polished, which is accordingly done. B is entitled to retain the stone till he is paid for the services he has rendered.

(*b*) A gives cloth to B, a tailor, to make into a coat. B promises A to deliver the coat as soon as it is finished, and to give a three months' credit for the price. B is not entitled to retain the coat until he is paid.

171. Bankers, factors, wharfingers, attorneys of a High Court and policy-brokers may, in the absence of a contract to the contrary, retain, as a security for a general balance of account, any goods bailed to them; but no other persons have a right to retain, as a security for such balance, goods bailed to them, unless there is an express contract to that effect[1].

General lien of bankers, factors, wharfingers, attorneys and policy-brokers.

Bailments of Pledges.

172. The bailment of goods as security for payment of a debt or performance of a promise is called "pledge." The bailor is in this case called the "pawnor." The bailee is called the "pawnee."

"Pledge", "pawnor" and "pawnee" defined.

173. The pawnee may retain the goods pledged, not only for payment of the debt or the performance of the promise, but for the interest of the debt, and all necessary expenses incurred by him in respect of the possession or for the preservation of the goods pledged.

Pawnee's right of retainer.

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[1] As to lien of an agent, *see* s. 221, *infra*. As to lien of a Railway Administration, *see* the Indian Railways Act, 1890 (9 of 1890), s. 55.

Pawnee not to retain for debt or promise other than that for which goods pledged. Presumption in case of subsequent advances.

174. The pawnee shall not, in the absence of a contract to that effect retain the goods pledged for any debt or promise other than the debt or promise for which they are pledged; but such contract, in the absence of anything to the contrary, shall be presumed in regard to subsequent advances made by the pawnee.

Pawnee's right as to extraordinary expenses incurred.

175. The pawnee is entitled to receive from the pawnor extraordinary expenses incurred by him for the preservation of the goods pledged.

Pawnee's right where pawnor makes default.

176. If the pawnor makes default in payment of the debt, or performance, at the stipulated time of the promise, in respect of which the goods were pledged, the pawnee may bring a suit against the pawnor upon the debt or promise, and retain the goods pledged as a collateral security; or he may sell the thing pledged, on giving the pawnor reasonable notice of the sale.

If the proceeds of such sale are less than the amount due in respect of the debt or promise, the pawnor is still liable to pay the balance. If the proceeds of the sale are greater than the amount so due, the pawnee shall pay over the surplus to the pawnor.

Defaulting pawnor's right to redeem.

177. If a time is stipulated for the payment of the debt, or performance of the promise, for which the pledge is made, and the pawnor makes default in payment of the debt or performance of the promise at the stipulated time, he may redeem the goods pledged at any subsequent time before the actual sale of them[1]; but he must, in that case, pay, in addition, any expenses which have arisen from his default.

Pledge by mercantile agent.

[2][**178.** Where a mercantile agent is, with the consent of the owner, in possession of goods or the document of title to goods, any pledge made by him, when acting in the ordinary course of business of a mercantile agent, shall be as valid as if he were expressly authorised by the owner of the goods to make the same; provided that the pawnee acts in good faith and has not at the time of the pledge notice that the pawnor has not authority to pledge.

Explanation.—In this section, the expressions 'mercantile agent' and 'documents of title' shall have the meanings assigned to them in the Indian Sale of Goods Act, 1930. III of 1930

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[1] For limitation, *see* the Indian Limitation Act, 1908 (9 of 1908), Sch. I, Article 145.

[2] Ss. 178 and 178A were subs. by the Indian Contract (Amendment) Act, 1930 (4 of 1930), s. 2, for the original s. 178.

178A. When the pawnor has obtained possession of the goods pledged by him under a contract voidable under section 19 or section 19A, but the contract has not been rescinded at the time of the pledge, the pawnee acquires a good title to the goods, provided he acts in good faith and without notice of the pawnor's defect of title.] Pledge by person in possession under voidable contract.

179. Where a person pledges goods in which he has only a limited interest, the pledge is valid to the extent of that inerest. Pledge where pawnor has only limited interest.

Suits by Bailees or Bailors against Wrong-doers.

180. If a third person wrongfully deprives the bailee of the use or possession of the goods bailed, or does them any injury, the bailee is entitled to use such remedies as the owner might have used in the like case if no bailment had been made; and either the bailor or the bailee may bring a suit against a third person for such deprivation or injury. Suit by bailor or bailee against wrong-doer.

181. Whatever is obtained by way of relief or compensation in any such suit shall, as between the bailor and the bailee, be dealt with according to their respective interests. Apportionment of relief or compensation obtained by such suits.

CHAPTER X.

AGENCY.

Appointment and Authority of Agents.

182. An "agent" is a person employed to do any act or another or to represent another in dealings with third persons. The person for whom such act is done, or who is so represented, is called the "principal". "Agent" and "principal" defined.

183. Any person who is of the age of majority according to the law to which he is subject, and who is of sound mind, may employ an agent. Who may employ agent.

184. As between the principal and third persons any person may become an agent, but no person who is not of the age of majority and of sound mind can become an agent, so as to be responsible to his principal according to the provisions in that behalf herein contained. Who may be an agent.

185. No consideration is necessary to create an agency. Consideration not necessary.

186. The authority of an agent may be expressed or implied[1]. Agents authority may be expressed or implied.

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[1] *See*, however, of the Indian Registration Act, 1908 (16 of 1908), s. 33. *See* also the Code of Civil Procedure, 1908 (Act 5 of 1908), Sch. I, Order III, rule 4.

Definitions of express and implied authority.

187. An authority is said to be express when it is given by words spoken or written. An authority is said to be implied when it is to be inferred from the circumstances of the case; and things spoken or written, or the ordinary course of dealing, may be accounted circumstances of the case.

Illustration.

A owns a shop in Serampur, living himself in Calcutta, and visiting the shop occasionally. The shop is managed by B, and he is in the habit of ordering goods from C in the name of A for the purposes of the shop, and of paying for them out of A's funds with A's knowledge. B has an implied authority from A to order goods from C in the name of A for the purposes of the shop.

Extent of agent's authority.

188. An agent having an authority to do an act has authority to do every lawful thing which is necessary in order to do such act.

An agent having an authority to carry on a business has authority to do every lawful thing necessary for the purpose, or usually done in the course of conducting such business.

Illustrations.

(*a*) A is employed by B, residing in London, to recover at Bombay a debt due to B. A may adopt any legal process necessary for the purpose of recovering the debt, and may give a valid discharge for the same.

(*b*) A constitutes B his agent to carry on his business of a ship-builder. B may purchase timber and other materials, and hire workmen, for the purposes of carrying on the business.

Agent's authority in an emergency.

189. An agent has authority, in an emergency, to do all such acts for the purpose of protecting his principal from loss as would be done by a person of ordinary prudence, in his own case, under similar circumstances.

Illustrations.

(*a*) An agent for sale may have goods repaired if it be necessary.

(*b*) A consigns provisions to B at Calcutta, with directions to send them immediately to C at Cuttack. B may sell the provisions at Calcutta, if they will not bear the journey to Cuttack without spoiling.

Sub-Agents.

When agent cannot delegate.

190. An agent cannot lawfully employ another to perform acts which he has expressly or impliedly undertaken to perform personally, unless by the ordinary custom of trade a sub-agent may, or, from the nature of the agency, a sub-agent must, be employed.

"Sub-agent" defined.

191. A "sub-agent" is a person employed by, and acting under the control of, the original agent in the business of the agency.

Representation of principal

192. Where a sub-agent is properly appointed, the principal is, so far as regards third persons, represented by the sub-agent, and is bound

by and responsible for his acts, as if he were an agent originally appointed by the principal,

by sub-agent properly appointed.

The agent is responsible to the principal for the acts of the sub-agent.

Agent's responsibility for sub-agent.

The sub-agent is responsible for his acts to the agent, but not to the principal, except in case of fraud or wilful wrong.

Sub-agent's responsibility.

193. Where an agent, without having authority to do so, has appointed a person to act as a sub-agent, the agent stands towards such person in the relation of a principal to an agent, and is responsible for his acts both to the principal and to third persons; the principal is not represented by or responsible for the acts of the person so employed, nor is that person responsible to the principal.

Agent's responsibility for sub-agent appointed without authority.

194. Where an agent, holding an express or implied authority to name another person to act for the principal in the business of the agency, has named another person accordingly, such person is not a sub-agent, but an agent of the principal for such part of the business of the agency as is entrusted to him.

Relation between principal and person duly appointed by agent to act in business of agency.

Illustrations.

(*a*) A directs B, his solicitor, to sell his estate by auction, and to employ an auctioneer for the purpose. B names C, an auctioneer, to conduct the sale. C is not a sub-agent, but is A's agent for the conduct of the sale.

(*b*) A authorises B, a merchant in Calcutta, to recover the moneys due to A from C. & Co. B instructs D, a solicitor, to take legal proceedings against C & Co. for the recovery of the money. D is not a sub-agent, but is solicitor for A.

195. In selecting such agent for his principal, an agent is bound to exercise the same amount of discretion as a man of ordinary prudence would exercise in his own case; and, if he does this, he is not responsible to the principal for the acts or negligence of the agent so selected.

Agent's duty in naming such person.

Illustrations.

(*a*) A instructs B, a merchant, to buy a ship for him. B employs a ship surveyor of good reputation to choose a ship for A. The surveyor makes the choice negligently and the ship turns out to be unseaworthy and is lost. B is not, but the surveyor is, responsible to A.

(*b*) A consigns goods to B, a merchant, for sale. B, in due course, employs an autioneer in good credit to sell the goods of A, and allows the auctioneer to receive the proceeds of the sale. The auctioneer afterwards becomes insolvent without having accounted for the proceeds. B is not responsible to A for the proceeds.

Ratification.

196. Where acts are done by one person on behalf of another, but without his knowledge or authority, he may elect to ratify or to disown

Right of person as to acts

done for him without his authority.—Effect of ratification.

such acts. If he ratify them, the same effects will follow as if they had been performed by his authority.

Ratification may be expressed or implied.

197. Ratification may be expressed or may be implied in the conduct of the person on whose behalf the acts are done.

Illustrations.

(*a*) A, without authority, buys goods for B. Afterwards B sells them to C on his own account: B's conduct implies a ratification of the purchase made for him by A.

(*b*) A, without B's authority, lends B's money to C. Afterwards B accepts interest on the money from C. B's conduct implies a ratification of the loan.

Knowledge requisite for valid ratification.

198. No valid ratification can be made by a person whose knowledge of the facts of the case is materially defective.

Effect of ratifying unauthorized act forming part of a transaction.

199. A person ratifying any unauthorised act done on his behalf ratifies the whole of the transaction of which such act formed a part.

Ratification of unauthorized act cannot injure third person.

200. An act done by one person on behalf of another, without such other person's authority, which, if done with authority, would have the effect of subjecting a third person to damages, or of terminating any right or interest of a third person, cannot, by ratification, be made to have such effect.

Illustrations.

(*a*) A, not being authorized thereto by B, demands, on behalf of B, the delivery of a chattel, the property of B, from C, who is in possession of it. This demand cannot be ratified by B, so as to make C liable for damages for his refusal to deliver.

(*b*) A holds a lease from B, terminable on three months' notice. C, an unauthorized person, gives notice of termination to A. The notice cannot be ratified by B, so as to be binding on A.

Revocation of Authority.

Termination of agency.

201. An agency is terminated by the principal revoking his authority; or by the agent renouncing the business of the agency; or by the business of the agency being completed; or by either the principal or agent dying or becoming of unsound mind; or by the principal being adjudicated an insolvent under the provisions of any Act for the time being in force for the relief of insolvent debtors.

Termination of agency where agent

202. Where the agent has himself an interest in the property which forms the subject-matter of the agency, the agency cannot, in the

absence of an express contract, be terminated to the prejudice of such interest.

has an interest in subject-matter.

Illustrations.

(*a*) A gives authority to B to sell A's land, and to pay himself, out of the proceeds, the debts due to him from A. A cannot revoke this authority, nor can it be terminated by his insanity or death.

(*b*) A consigns 1,000 bales of cotton to B, who has made advances to him on such cotton, and desires B to sell the cotton, and to repay himself, out of the price, the amount of his own advances. A cannot revoke this authority, nor is it terminated by his insanity or death.

203. The principal may, save as is otherwise provided by the last preceding section, revoke the authority given to his agent at any time before the authority has been exercised so as to bind the principal.

When principal may revoke agent's authority.

204. The principal cannot revoke the authority given to his agent after the authority has been partly exercised so far as regards such acts and obligation as arise from acts already done in the agency.

Revocation where authority has been partly exercised.

Illustrations.

(*a*) A authorizes B to buy 1,000 bales of cotton on account of A, and to pay for it out of A's money remaining in B's hands. B buys 1,000 bales of cotton in his own name, so as to make himself personally liable for the price. A cannot revoke B's authority so far as regards payment for the cotton.

(*b*) A authorizes B to buy, 1,000 bales of cotton on account of A, and to pay for it out of A's moneys remaining in B's hands. B buys 1,000 bales of cotton in A's name and so as not to render himself personally liable for the price. A can revoke B's authority to pay for the cotton.

205. Where there is an express or implied contract that the agency should be continued for any period of time, the principal must make compensation to the agent, or the agent to the principal, as the case may be, for any previous revocation or renunciation of the agency without sufficient cause.

Compensation for revocation by principal, or renunciation by agent.

206. Reasonable notice must be given of such revocation or renunciation; otherwise the damage thereby resulting to the principal or the agent, as the case may be, must be made good to the one by the other.

Notice of revocation or renunciation.

207. Revocation and renunciation may be expressed or may be implied in the conduct of the principal or agent respectively.

Revocation and renunciation may be expressed or implied.

Illustration.

A empowers B to let A's house. Afterwards A lets it himself. This is an implied revocation of B's authority.

208. The termination of the authority of an agent does not, so far as regards the agent, take effect before it becomes known to him, or, so far as regards third persons, before it becomes known to them.

When termination of agent's authority

Illustrations.

takes effect as to agent, and as to third persons.

(*a*) A directs B to sell goods for him, and agrees to give B five per cent. commission on the price fetched by the goods. A afterwards, by letter, revokes B's authority. B, after the letter is sent, but before he receives it, sells the goods for 100 rupees. The sale is binding on A, and B is entitled to five rupees as his commission.

(*b*) A, at Madras, by letter, directs B to sell for him some cotton lying in a warehouse in Bombay, and afterwards, by letter, revokes his authority to sell, and directs B to send the cotton to Madras. B, after receiving the second letter, enters into a contract with C, who knows of the first letter, but not of the second, for the sale to him of the cotton. C pays B the money, with which B absconds. C's payment is good as against A.

(*c*) A directs B, his agent, to pay certain money to C. A dies, and D takes out probate to his will. B, after A's death, but before hearing of it, pays the money to C. The payment is good as against D, the executor.

Agent's duty on termination of agency by principal's death or insanity.

209. When an agency is terminated by the principal dying or becoming of unsound mind, the agent is bound to take, on behalf of the representatives of his late principal, all reasonable steps for the protection and preservation of the interests entrusted to him.

Termination of sub-agent's authority.

210. The termination of the authority of an agent causes the termination (subject to the rules herein conained regarding the termination of an agent's authority) of the authority of all sub-agents appointed by him.

Agent's Duty to Principal.

Agent's duty in conducting principal' business.

211. An agent is bound to conduct the business of his principal according to the directions given by the principal, or, in the absence of any such directions, according to the custom which prevails in doing business of the same kind at the place where the agent conducts such business. When the agent acts otherwise, if any loss be sustained, he must make it good to his principal, and, if any profit accrues, he must account for it.

Illustrations.

(*a*) A, an agent engaged in carrying on for B a business, in which it is the custom to invest from time to time, at interest, the moneys which may be in hand, omits to make such investment. A must make good to B the interest usually obtained by such investments.

(*b*) B, a broker, in whose business it is not the custom to sell on credit, sells goods of A on credit to C., whose credit at the time was very high. C, before payment, becomes insolvent. B must make good the loss to A.

Skill and diligence required from agent.

212. An agent is bound to conduct the business of the agency with as much skill as is generally possessed by persons engaged in similar business, unless the principal has notice of his want of skill. The agent is always bound to act with reasonable diligence, and to use such skill as he possesses; and to make compensation to his principal in respect of

the direct consequences of his own neglect, want of skill or misconduct, but not in respect of loss or damage which are indirectly or remotely caused by such neglect, want of skill or misconduct.

Illustrations.

(*a*) A, a merchant in Calcutta, has an agent, B, in London to whom a sum of money is paid on A's account, with orders to remit. B retains the money for a considerable time. A, in consequence of not receiving the money, becomes insolvent. B is liable for the money and interest from the day on which it ought to have been paid, according to the usual rate, and for any further direct loss—as *e.g.*, by variation of rate of exchange—but not further.

(*b*) A, an agent for the sale of goods, having authority to sell on credit, sells to B on credit, without making the proper and usual enquiries as to the solvency of B. B, at the time of such sale, is insolvent. A must make compensation to his principal in respect of any loss thereby sustained.

(*c*) A, an insurance-broker employed by B to effect an insurance on a ship, omits to see that the usual clauses are inserted in the policy. The ship is afterwards lost. In consequence of the omission of the clauses nothing can be recovered from the underwriters. A is bound to make good the loss to B.

(*d*) A, a merchant in England, directs B, his agent at Bombay, who accepts the agency, to send him 100 bales of cotton by a certain ship. B, having it in his power to send the cotton, omits to do so. The ship arrives safely in England. Soon after her arrival the price of cotton rises. B is bound to make good to A the profit which he might have made by the 100 bales of cotton at the time the ship arrived, but not any profit he might have made by the subsequent rise.

Agent's accounts.

213. An agent is bound to render proper accounts to his principal on demand.

Agent's duty to communicate with principal.

214. It is the duty of an agent, in cases of difficulty, to use all reasonable diligence in communicating with his principal, and in seeking to obtain his instructions.

Right of principal when agent deals, on his own account in business of agency without principal's consent.

215. If an agent deals on his own account in the business of the agency, without first obtaining the consent of his principal and acquainting him with all material circumstances which have come to his own knowledge on the subject, the principal may repudiate the transaction, if the case shows either that any material fact has been dishonestly concealed from him by the agent, or that the dealings of the agent have been disadvantageous to him.

Illustrations.

(*a*) A directs B to sell A's estate. B buys the estate for himself in the name of C. A, on discovering that B has bought the estate for himself, may repudiate the sale, if he can show that B has dishonestly concealed any material fact, or that the sale has been disadvantageous to him.

(*b*) A directs B to sell A's estate. B, on looking over the estate before selling it, finds a mine on the estate which is unknown to A. B informs A that he wishes to buy the estate for himself, but conceals the discovery of the mine. A allows B to buy in ignorance of the existence of the mine. A, on discovering that B knew of the mine at the time he bought the estate, may either repudiate or adopt the sale at his option.

Principal's right to benefit gained by agent dealing on his own account in business of agency.

216. If an agent, without the knowledge of his principal, deals in the business of the agency on his own account instead of on account of his principal, the principal is entitled to claim from the agent any benefit which may have resulted to him from the transaction.

Illustration.

A directs B, his agent, to buy a certain house for him. B tells A it cannot be bought, and buys the house for himself. A may, on discovering that B has bought the house, compel him to sell it to A at the price he gave for it.

Agent's right of retainer out of sums received on principal's account.

217. An agent may retain, out of any sums received on account of the principal in the business of the agency, all moneys due to himself in respect of advances made or expenses properly incurred by him in conducting such business, and also such remuneration as may be payable to him for acting as agent.

Agent's duty to pay sums received for principal

218. Subject to such deductions, the agent is bound to pay to his principal all sums received on his account.

When agent's remuneration becomes due.

219. In the absence of any special contract, payment for the performance of any act is not due to the agent until the completion of such act; but an agent may detain moneys received by him on account of goods sold, although the whole of the goods consigned to him for sale may not have been sold, or although the sale may not be actually complete.

Agent not entitled to remuneration for business misconducted.

220. An agent who is guilty of misconduct in the business of the agency is not entitled to any remuneration in respect of that part of the business which he has misconducted.

Illustrations.

(*a*) A employs B to recover 1,00,000 rupees from C and to lay it out on good security. B recovers the 1,00,000 rupees and lays out 90,000 rupees on good security, but lays out 10,000 rupees on security which he ought to have known to be bad, whereby A loses 2,000 rupees. B is entitled to remuneration for recovering the 1,00,000 rupees and for investing the 90,000 rupees. He is not entitled to any remuneration for investing the 10,000 rupees, and he must make good the 2,000 rupees to B.

(*b*) A employs B to recover 1,000 rupees from C. Through B's misconduct the money is not recovered. B is entitled to no remuneration for his services, and must make good the loss.

Agent's lien on principal's property.

221. In the absence of any contract to the contrary, an agent is entitled to retain goods, papers and other property, whether movable or immovable, of the principal received by him, until the amount due to himself for commission, disbursements and services in respect of the same has been paid or accounted for to him.

(*Chapter X.—Agency.*)

Principal's Duty to Agent.

222. The employer of an agent is bound to indemnify him against the consequences of all lawful acts done by such agent in exercise of the authority conferred upon him.

Agent to be indemnified against consequences of lawful acts.

Illustrations.

(*a*) B, at Singapur, under instructions from A of Calcutta, contracts with C to deliver certain goods to him. A does not send the goods to B, and C sues B for breach of contract. B informs A of the suit, and A authorizes him to defend the suit. B defends the suit, and is compelled to pay damages and costs, and incurs expenses. A is liable to B for such damages, costs and expenses.

(*b*) B, a broker at Calcutta, by the orders of A, a merchant there, contracts with C for the purchase of 10 casks of oil for A. Afterwards A refuses to receive the oil, and C sues B. B informs A, who repudiates the contract altogether. B defends, but unsuccessfully, and has to pay damages and costs and incurs expenses. A is liable to B for such damages, costs and expenses.

223. Where one person employs another to do an act, and the agent does the act in good faith, the employer is liable to indemnify the agent against the consequences of that act, though it cause an injury to the rights of third persons.

Agent to be indemnified against consequences of acts done in good faith.

Illustrations.

(*a*) A, a decree-holder and entitled to execution of B's goods, requires the officer of the Court to seize certain goods, representing them to be the goods of B. The officer seizes the goods, and is sued by C, the true owner of the goods. A is liable to indemnify the officer for the sum which he is, compelled to pay to C, in consequence of obeying A's directions.

(*b*) B, at the request of A, sells goods in the possession of A, but which A had no right to dispose of. B does not know this, and hands over the proceeds of the sale to A. Afterwards C, the true owner of the goods, sues B and recovers the value of the goods and costs. A is liable to indemnify B for what he has been compelled to pay to C and for B's own expenses.

224. Where one person employs another to do an act which is criminal, the employer is not liable to the agent, either upon an express or an implied promise, to indemnify him against the consequences of that Act[1].

Non-liability of employer of agent to do a criminal act.

Illustrations.

(*a*) A employs B to beat C, and agrees to indemnify him against all consequences of the act. B thereupon beats C, and has to pay damages to C for so doing. A is not liable to indemnify B for those damages.

(*b*) B, the proprietor of a newspaper, publishes, at A's request, a libel upon C in the paper, and A agrees to indemnify B against the consequences of the publication, and all costs and damages of any action in respect thereof. B is sued by C and has to pay damages, and also incurs expenses. A is not liable to B upon the indemnity.

225. The principal must make compensation to his agent in respect of injury[2] caused to such agent by the principal's neglect or want of skill.

Compensation to agent for injury caused by principal's neglect.

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[1] *See* s. 24, *supra*.

[2] *Cf.* the Indian Fatal Accidents Act, 1855 (13 of 1855).

(*Chapter X.—Agency.*)

Illustration.

A employs B as a bricklayer, in building a house, and puts up the scaffolding himself. The scaffolding is unskilfully put up, and B is in consequence hurt. A must make compensation to B.

Effect of agency on contract with third persons.

Enforcement and consequences of agent's contracts.

226. Contracts entered into through an agent, and obligations arising from acts done by an agent, may be enforced in the same manner, and will have the same legal consequences, as if the contracts had been entered into and the acts done by the principal in person.

Illustrations.

(*a*) A buys goods from B, knowing that he is an agent for their sale, but not knowing who is the principal. B's principal is the person entitled to claim from A the price of the goods, and A cannot, in a suit by the principal, set off against that claim a debt due to himself from B.

(*b*) A, being B's agent with authority to receive money on his behalf, receives from C a sum of money due to B. C is discharged of his obligation to pay the sum in question to B.

Principal how far bound, when agent exceeds authority.

227. When an agent does more than he is authorized to do, and when the part of what he does, which is within his authority, can be separated from the part which is beyond his authority, so much only of what he does as is within his authority is binding as between him and his principal.

Illustration.

A, being owner of a ship and cargo, authorizes B to procure an insurance for 4,000 rupees on the ship. B procures a policy for 4,000 rupees on the ship, and another for the like sum on the cargo. A is bound to pay the premium for the policy on the ship, but not the premium for the policy on the cargo.

Principal not bound when excess of agent's authority is not separable.

228. Where an agent does more than he is authorized to do, and what he does beyond the scope of his authority cannot be separated from what is within it, the principal is not bound to recognize the transaction.

Illustration.

A authorizes B to buy 500 sheep for him. B buys 500 sheep and 200 lambs for one sum of 6,000 rupees. A may repudiate the whole transaction.

Consequences of notice given to agent.

229. Any notice given to or information obtained by the agent, provided it be given or obtained in the course of the business transacted by him for the principal, shall, as between the principal and third parties, have the same legal consequences as if it had been given to or obtained by the principal.

Illustrations.

(*a*) A is employed by B to buy from C certain goods, of which C is the apparent owner, and buys them accordingly. In the course of the treaty for the sale, A learns that the goods really belonged to D, but B is ignorant of that fact. B is not entitled to set-off a debt owing to him from C against the price of the goods.

(*b*) A is employed by B to buy from C goods of which C is the apparent owner A was, before he was so employed, a servant of C, and then learnt that the goods really belonged to D, but B is ignorant of that fact. In spite of the knowledge of his agent, B may set-off against the price of the goods a debt owing to him from C.

Agent cannot personally enforce, nor be bound by, contracts on behalf of principal.

230. In the absence of any contract to that effect, an agent cannot personally enforce contracts entered into by him on behalf of his principal, nor is he personally bound by them.

Presumption of contract to contrary.

Such a contract shall be presumed to exist in the following cases :—

(1) where the contract is made by an agent for the sale or purchase of goods for a merchant resident abroad ;

(2) where the agent does not disclose the name of his principal;

(3) where the principal, though disclosed, cannot be sued.

Rights of parties to a contract made by agent not disclosed.

231. If an agent makes a contract with a person who neither knows, nor has reason to suspect, that he is an agent, his principal may require the performance of the contract; but the other contracting party has, as against the principal, the same rights as he would have had as against the agent if the agent had been principal.

If the principal discloses himself before the contract is completed, the other contracting party may refuse to fulfil the contract, if he can show that, if he had known who was the principal in the contract, or if he had known that the agent was not a principal, he would not have entered into the contract.

Performance of contract with agent supposed to be principal.

232. Where one man makes a contract with another, neither knowing nor having reasonable ground to suspect that the other is an agent, the principal, if he requires the performance of the contract, can only obtain such performance subject to the rights and obligations subsisting between the agent and the other party to the contract.

Illustration.

A, who owes 500 rupees to B, sells 1,000 rupees' worth of rice to B. A is acting as agent for C in the transaction, but B has no knowledge nor reasonable ground of suspicion that such is the case. C cannot compel B to take the rice without allowing him to set-off A's debt.

Right of person dealing with agent personally liable.

233. In cases where the agent is personally liable, a person dealing with him may hold either him or his principal, or both of them, liable.

Illustration.

A enters into a contract with B to sell him 100 bales of cotton, and afterwards discovers that B was acting as agent for C. A may sue either B or C, or both, for the price of the cotton.

Consequence of inducing agent or principal to act on belief that principal or agent will be held exclusively liable.

234. When a person who has made a contract with an agent induces the agent to act upon the belief that the principal only will be held liable, or induces the principal to act upon the belief that the agent only will be held liable, he cannot afterwards hold liable the agent or principal respectively.

Liability of pretended agent.

235. A person untruly representing himself to be the authorized agent of another, and thereby inducing a third person to deal with him as such agent, is liable, if his alleged employer does not ratify his acts, to make compensation to the other in respect of any loss or damage which he has incurred by so dealing.

Person falsely contracting as agent not entitled to performance.

236. A person with whom a contract has been entered into in the character of agent is not entitled to require the performance of it if he was in reality acting, not as agent, but on his own account.

Liability of principal inducing belief that agent's unauthorized acts were authorized.

237. When an agent has, without authority, done acts or incurred obligations to third persons on behalf of his principal, the principal is bound by such acts or obligations if he has by his words or conduct induced such third persons to believe that such acts and obligations were within the scope of the agent's authority.

Illustrations.

(*a*) A consigns goods to B for sale, and gives him instructions not to sell under a fixed price. C, being ignorant of B's instructions, enters into a contract with B to buy the goods at a price lower than the reserved price. A is bound by the contract.

(*b*) A entrusts B with negotiable instruments endorsed in blank. B sells them to C in violation of private orders from A. The sale is good.

Effect, on agreement, of misrepresentation or fraud by agent

238. Misrepresentations made, or frauds committed, by agents acting in the course of their business for their principals have the same effect on agreements made by such agents as if such misrepresentations or frauds had been made or committed by the principals; but misrepresentations made, or frauds committed, by agents, in matters which do not fall within their authority, do not affect their principals.

Illustrations.

(*a*) A, being B's agent for the sale of goods, induces C to buy them by a misrepresentation, which he was not authorized by B to make. The contract is voidable, as between B and C, at the option of C.

(*b*) A, the captain of B's ship, signs bills of lading without having received on board the goods mentioned therein. The bills of lading are void as between B and the pretended consignor.

CHAPTER XI.—[Of Partnership.] Rep. by the Indian Partnership Act, 1932 (IX of 1932), s. 73 and Sch. II.

SCHEDULE.

Rep. by the Repealing and Amending Act, 1914 (X of 1914), s. 3 and Sch. II.

THE INDIAN CHRISTIAN MARRIAGE ACT, 1872.

CONTENTS.

PREAMBLE.

PRELIMINARY.

SECTIONS.

1. Short title.
   Extent.
2. [*Repealed.*]
3. Interpretation-clause.

PART I.

THE PERSONS BY WHOM MARRIAGES MAY BE SOLEMNIZED.

4. Marriages to be solemnized according to Act.
5. Persons by whom marriages may be solemnized.
6. Grant and revocation of licenses to solemnize marriages.
7. Marriage Registrars.
   Senior Marriage Registrar.
   Magistrate when to be Marriage Register.
8. [*Repealed.*]
9. Licensing of persons to grant certificates of marriage between Indian Christians.

PART II.

TIME AND PLAEC AT WHICH MARRIAGES MAY BE SOLEMNIZED.

10. Time for solemnizing marriage.
    Exceptions.
11. Place for solemnizing marriage.
    Fee for special license.

PART III.

MARRIAGES SOLEMNIZED BY MINISTERS OF RELIGION LICENSED UNDER THIS ACT.

SECTIONS.

12. Notice of intended marriage.
13. Publication of such notice.
Return or transfer of notice.
14. Notice of intended marriage in private dwelling.
15. Sending copy of notice to Marriage Registrar when one party is a minor.
16. Procedure on receipt of notice.
17. Issue of certificate of notice given and declaration made.
Proviso.
18. Declaration before issue of certificate.
19. Consent of father, or guardian, or mother.
20. Power to prohibit by notice issue of certificate.
21. Procedure on receipt of notice.
22. Issue of certificate in case of minority.
23. Issue of certificates to Indian Christians.
24. Form of certificate.
25. Solemnization of marriage.
26. Certificate void if marriage not solemnized within two months.

PART IV.

REGISTRATION OF MARRIAGES SOLEMNIZED BY MINISTERS OF RELIGION.

27. Marriages when to be registered.
28. Registration of marriages solemnized by Clergymen of Church of England.
29. Quarterly returns to Archdeaconry.
Contents of returns.
30. Registration and returns of marriages solemnized by Clergymen of Church of Rome.
31. Registration and returns of marriages solemnized by Clergymen of Church of Scotland.

SECTIONS.

32. Certain marriages to be registered in duplicate.
33. Entries of such marriages to be signed and attested.
34. Certificate to be forwarded to Marriage Registrar, copied and sent to Registrar General.
35. Copies of certificates to be entered and numbered.
36. Registrar to add number of entry to certificate, and send to Registrar General.
37. Registration of marriages between Indian Christians by persons referred to in clauses (1), (2) and (3) of section 5
Custody and disposal of register-book.

PART V.

MARRIAGES SOLEMNIZED BY, OR IN THE PRESENCE OF, A MARRIAGE REGISTRAR.

38. Notice of intended marriage before Marriage Registrar.
39. Publication of notice.
40. Notice to be filed and copy entered in Marriage Notice Book.
41. Certificate of notice given and oath made.
Proviso.
42. Oath before issue of certificate.
43. Petition to High Court to order certificate in less than fourteen days.
Order on petition.
44. Consent of father or guardian.
Protest against issue of certificate.
Effect of protest.
45. Petition where person whose consent is necessary is insane, or unjustly withholds consent.
Procedure on petition.
46. Petition when Marriage Registrar refuses certificate.
Procedure on petition.
47. [*Repealed.*]

SECTIONS.

48. Petition when Registrar doubts authority of person forbidding. Procedure on petition.

49. Liability for frivolous protest against issue of certificate.

50. Form of certificate.

51. Solemnization of marriage after issue of certificate.

52. When marriage not had within two months after notice, new notice required.

53. Marriage Registrar may ask for particulars to be registered.

54. Registration of marriage solemnized under Part V.

55. Certificates to be sent monthly to Registrar General. Custody of register-book.

56. [*Repealed.*]

57. Registrars to ascertain that notice and certificate are understood by Indian Christians.

58. Indian Christians to be made to understand declarations

59. Registration of marriages between Indian Christians.

PART VI.

MARRIAGE OF INDIAN CHRISTIANS.

60. On what conditions marriages of Indian Christians may be certified.

61. Grant of certificate.

62. Keeping of register-book and deposit of extracts therefrom with Registrar General.

63. Searches in register-book and copies of entries.

64. Books in which marriages of Indian Christians under Part I or Part III are registered.

65. Part VI not to apply to Roman Catholics. Saving of certain marriages.

PART VII.

PENALTIES.

SECTIONS.

66. False oath, declaration, notice or certificate for procuring marriage
67. Forbidding, by false personation, issue of certificate by Marriage Registrar.
68. Solemnizing marriage without due authority.
69. Solemnizing marriage out of proper time, or without witnesses. Saving of marriages solemnized under special license.
70. Solemnizing, without notice or within fourteen days after notice, marriage with minor.
71. Issuing certificate, or marrying without publication of notice, marrying after expiry of notice ;
solemnizing marriage with minor within fourteen days without authority of Court, or without sending copy of notice ;
issuing certificate against authorized prohibition.
72. Issuing certificate after expiry of notice, or, in case of minor, within fourteen days after notice, or against authorized prohibition.
73. Persons authorized to solemnize marriage (other than Clergy of Churches of England, Scotland or Rome) ;
issuing certificate, or marrying, without publishing notice, or after expiry of certificate ;
issuing certificate for, or solemnizing, marriage with minor within fourteen days after notice;
issuing certificate authorizedly forbidden;
solemnizing marriage authorizedly forbidden.
74. Unlicensed person granting certificate pretending to be licensed.
75. Destroying or falsifying register-books.
76. Limitation of prosecutions under Act.

PART VIII.

MISCELLANEOUS.

77. What matters need not be proved in respect of marriage in accordance with Act.

SECTIONS.

78. Correction of errors.

79. Searches and copies of entries.

80. Certified copy of entry in marriage register, etc., to be evidence.

81. Certificates of certain marriages to be sent to Central Government.

82. State Government to prescribe fees.

83. Power to make rules.

84. [*Repealed*].

85. Power to declare who shall be District Judge.

86. [*Repealed*].

87. Saving of Consular marriages.

88. Non-validation of marriages within prohibited degrees.

SCHEDULE I.—NOTICE OF MARRIAGE.

SCHEDULE II.—CERTIFICATE OF RECEIPT OF NOTICE.

SCHEDULE III.—FORM OF REGISTER OF MARRIAGES.

SCHEDULE IV.—MARRIAGE REGISTER-BOOK.

CERTIFICATE OF MARRIAGE.

SCHEDULE V.—[*Repealed.*]

(*Preliminary.*)

ACT No. XV OF 1872.[1]

[*18th July, 1872.*]

An Act to consolidate and amend the law relating to the solemnization in India of the marriages of Christians.

WHEREAS it is expedient to consolidate and amend the law relating to the solemnization in India of the marriages of persons professing the Christian religion ; It is hereby enacted as follows :— Preamble.

PRELIMINARY.

1. This Act may be called the Indian Christian Marriage Act, 1872. Short title.
[2][It extends[3] to the whole of India except Part B States.] Extent.

* * * * *

2. [*Enactments repealed.*] *Rep. by the Repealing Act, 1938 (1 of 1938), s. 2 and Sch.*

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[1] For the Statement of Objects and Reasons, *see* Gazette of India, 1871, Pt. V, p. 473 ; for Proceedings in Council, *see ibid.* 1870, Supplement, p. 1077 ; *ibid.* 1871, Supplement pp. 1426, 1643 ; *ibid.* 1872, Supplement, pp. 257, 728, 742, 805, 813 and 858. This Act is based on 14 and 15 Vict., c. 40, and 58 Geo. III, c. 84 (both Statutes relate to marriages in India and are now no longer in force), and Acts 5 of 1852 and 5 of 1865 ; the last two Acts were rep. by this Act.

[2] Subs. by the A.O. 1950 for the second para, as amended by the A.O. 1937 and A.O. 1948.

[3] This Act has been extended to Berar by the Berar Laws Act, 1941 (4 of 1941) and has been declared to be in force in the Sonthal Parganas by the Sonthal Parganas Settlement Regulation (3 of 1872), s. 3; in the Khondmals District by the Khondmals Laws Regulation, 1936 (4 of 1936), s. 3 and Sch.; and in the Angul District by the Angul Laws Regulation, 1936 (5 of 1936), s. 3 and Sch.; and also by notification under s. 3 of the Scheduled Districts Act, 1874 (14 of 1874), in the following Scheduled Districts, namely :—the Districts of Hazaribagh, Lohardaga and Manbhum, and Pargana Dhalbhum and the Kolhan in the District of Singbhum [*see* Gazette of India, 1881, Pt. I, p. 504] ; [The District of Lohardaga, now called the Ranchi District (*see* Calcutta Gazette 1899, Pt. I, p. 44), included at this time the Palamau District, which was separated in 1894]; and the North-Western Provinces Tarai [*see ibid.* 1876, Pt. I, p. 505]. It has also been extended by notification under s. 5 of the same Act to the Sadiya Frontier Tract, *see* Assam Gazette, 1920, Pt. II, p. 1938.

[4] The commencement cl. was rep. by the Repealing Act, 1874 (16 of 1874).

(*Preliminary. Part I.—The Persons by whom Marriages may be solemnized.*)

Interpretation-clause.

3. In this Act, unless there is something repugnant in the subject of context,—

"Church of England" and "Anglican" mean and apply to the Church of England as by law established ;

"Church of Scotland" means the Church of Scotland as by law established ;

"Church of Rome" and "Roman Catholic" mean and apply to the Church which regards the Pope of Rome as its spiritual head ;

"Church" includes any chapel or other building generally used for public Christian worship ;

"minor" means a person who has not completed the age of twenty-one years and who is not a widower or a widow ;

[1]* * * *

the expression "Christians" means persons professing the Christian religion ;

[2][and the expression "Indian Christians" includes the Christian descendants of natives of India converted to Christianity, as well as such converts] ;

[3]["Registrar General of Births, Deaths and Marriages" means a Registrar General of Births, Deaths and Marriages appointed under the Births, Deaths and Marriages Registration Act, 1886.] V of 1886

PART I.

THE PERSONS BY WHOM MARRIAGES MAY BE SOLEMNIZED.

Marriages to be solemnized according to Act.

4. Every marriage between persons, one or both of whom is [4][or are] a Christian or Christians, shall be solemnized in accordance with the provisions of the next following section ; and any such marriage solemnized otherwise than in accordance with such provisions shall be void.

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[1] The definition of "Native State" which read "Native State" means the territories of any Native Prince or State in alliance with Her Majesty' was rep. by the A. O. 1937.

[2] Subs. by the A. O. 1950 for the original definition.

[3] Ins. by the Births, Deaths and Marriages Registration Act, 1886 (6 of 1886), s. 30.

[4] Ins. by the Amending Act, 1891 (12 of 1891), s. 2 and Sch. II.

(Part I.—Persons by whom Marriages may be solemnized.)

Persons by whom marriages may be solemnized

5. Marriages may be solemnized in [1][~~Part A States and Part C States~~] [illegible]

(1) by any person who has received episcopal ordination, provided that the marriage be solemnized according to the rules, rites, ceremonies and customs of the Church of which is a Minister;

(2) by any Clergyman of the Church of Scotland, provided that such marriage be solemnized according to the rules, rites, ceremonies and customs of the Church of Scotland ;

(3) by any Minister of Religion licensed under this Act to solemnize marriages ;

(4) by, or in the presence of, a Marriage Registrar appointed under this Act ;

(5) by any person licensed under this Act to grant certificates of marriage between [2][Indian] Christians.

Grant and revocation of licenses to solemnize marriage

[3][6. The [4][State Government], so far as regards the territories under its administration, [5]* * * may, by notification in the [6][Official Gazette] [7]* * *, grant licenses to Ministers of Religion to solemnize marriages within such territories [8]* * * and may, by a like notification, revoke such licenses.]

Marriage Registrars

7. The [4][State Government] may appoint one or more Christians, either by name or as holding any office for the time being, to be the Marriage Registrar or Marriage Registrars for any district subject to its administration.

Senior Marriage Registrar.

Where there are more Marriage Registrars than one in any district, the [4][State Government] shall appoint one of them to be the Senior Marriage Registrar

Magistrate when to be Marriage Registrar.

When there is only one Marriage Registrar in a district, and such Registrar is absent from such district, or ill, or when his office is temporarily vacant, the Magistrate of the district shall act as, and be, Marriage

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[1] Subs. by the A. O. 1950 for "India".

[2] Subs. by the A. O. 1950 for "Native"

[3] Subs. by the Indian Christian Marriage Act (1872) Amendment Act, 1891 (2 of 1891), s. 1, for the original s. 6.

[4] Subs. by the A. O. 1950 for "Provincial Government" which had been subs. by the A. O. 1937 for "L. G."

[5] The words "and the Central Government, so far as regards any Indian State" as amended by the A. O. 1937 for the original words, were rep. by the A. O. 1950.

[6] Subs. by the A. O. 1937 for "local official Gazette".

[7] The words "or in the Gazette of India, as the case may be," rep. by the A. O. 1937.

[8] The words "and State, respectively" rep. by the A. O. 1950.

(*Part I.—Persons by whom Marriages may be solemnized. Part II.—Time and Place at which Marriages may be solemnized.*)

Registrar thereof during such absence, illness or temporary vacancy.

8. [*Marriage Registrars in Indian States*] *Rep. by the A. O. 1950.*

Licensing of persons to grant certificates of marriage between Indian Christians.

9. The [1][State Government] [2]* * * may grant a license to any Christian, either by name or as holding any office for the time being, authorizing him to grant certificate of marriage between [3][Indian] Christians.

Any such license may be revoked by the authority by which it was granted, and every such grant or revocation shall be notified in the Official Gazette.

PART II.

TIME AND PLACE AT WHICH MARRIAGES MAY BE SOLEMNIZED.

Time for solemnizing marriage.

10. Every marriage under this Act shall be solemnized between the hours of six in the morning and seven in the evening :

Exceptions.

Provided that nothing in this section shall apply to—

(1) a Clergyman of the Church of England solemnizing a marriage under a special license permitting him to do so at any hour other than between six in the morning and seven in the evening, under the hand and seal of the Anglican Bishop of the Diocese or his Commissary, or

(2) a Clergyman of the Church of Rome solemnizing a marriage between the hours of seven in the evening and six in the morning, when he has received a general or special license in that behalf from the Roman Catholic Bishop of the Diocese or Vicariate in which such marriage is so solemnized, or from such person as the same Bishop has authorized to grant such license, [4][or

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[1] Subs. by the A. O. 1950 for "Provincial Government" which had been subs. by the A. O. 1937 for "L. G."

[2] The words "or (so far as regards any Indian State) the Central Government" as amended by the A. O. 1937 for the original words, were rep. by the A. O. 1950.

[3] Subs. by the A. O. 1950 for "Native".

[4] Ins. by the Indian Christian Marriage Act (1872) Amendment Act, 1891 (2 of 1891), s. 2.

(Part II.—Time and Place at which Marriages may be solemnized. Part III.—Marriages solemnized by Ministers of Religion licensed under this Act.)

(3) a Clergyman of the Church of Scotland solemnizing a marriage according to the rules, rites, ceremonies and customs of the Church of Scotland].

Place for solemnizing marriage.

11. No Clergyman of the Church of England shall solemnize a marriage in any place other than a church [1][where worship is generally held according to the forms of the Church of England].

unless there is no [1][such] church within five miles distance by the shortest road from such place, or

unless he has received a special license authorizing him to do so under the hand and seal of the Anglican Bishop of the Diocese or his Commissary.

Fee for special license.

For such special license, the Registrar of the Diocese may charge such additional fee as the said Bishop from time to time authorizes.

PART III.

MARRIAGES SOLEMNIZED BY MINISTERS OF RELIGION LICENSED UNDER THIS ACT.

Notice of intended marriage.

12. Whenever a marriage is intended to be solemnized by a Minister of Religion licensed to solemnize marriages under this Act—

one of the persons intending marriage shall give notice in writing, according to the form contained in the first schedule hereto annexed, or to the like effect, to the Minister of Religion whom he or she desires to solemnize the marriage, and shall state therein—

(*a*) the name and surname, and the profession or condition, of each of the persons intending marriage,

(*b*) the dwelling-place of each of them,

(*c*) the time during which each has dwelt there, and

(*d*) the church or private dwelling in which the marriage is to be solemnized :

Provided that, if either of such persons has dwelt in the place mentioned in the notice during more than one month, it may be stated therein that he or she has dwelt there one month and upwards.

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[1] Ins. by the Indian Christian Marriage Act (1872), Amendment Act, 1891 (2 of 1891), s. 3.

(*Part III.—Marriages solemnized by Ministers of Religion licensed under this Act.*)

Publication of such notice.

13. If the persons intending marriage desire it to be solemnized in a particular church, and if the Minister of Religion to whom such notice has been delivered be entitled to officiate therein, he shall cause the notice to be affixed in some conspicuous part of such church.

Return or transfer of notice.

But if he is not entitled to officiate as a Minister in such church, he shall, at his option, either return the notice to the person who deliverd it to him, or deliver it to some other Minister entitled to officiate therein, who shall thereupon cause the notice to be affixed as aforesaid.

Notice of intended marriage in private dwelling.

14. If it be intended that the marriage shall be solemnized in a private dwelling, the Minister of Religion, on receiving the notice prescribed in section 12, shall forward it to the Marriage Registrar of the district, who shall affix the same to some conspicuous place in his own office.

Sending copy of notice to Marriage Registrar when one party is a minor.

15. When one of the persons intending marriage is a minor, every Minister receiving such notice shall, unless within twenty-four hours after its receipt he returns the same under the provisions of section 13, send by the post or otherwise a copy of such notice to the Marriage Registrar of the district or, if there be more than one Registrar of such district, to the Senior Marriage Registrar.

Procedure on receipt of notice.

16. The Marriage Registrar or Senior Marriage Registrar, as the case may be, on receiving any such notice, shall affix it to some conspicuous place in his own office, and the latter shall further cause a copy of the said notice to be sent to each of the other Marriage Registrars in the same district, who shall likewise publish the same in the manner above directed.

Issue of certificate of notice given and declaration made.

17. Any Minister of Religion consenting or intending to solemnize any such marriage as aforesaid, shall, on being required so to do by or on behalf of the person by whom the notice was given, and upon one of the persons intending marriage making the declaration hereinafter required, issue under his hand a certificate of such notice having been given and of such declaration having been made:

Proviso.

Provided—

(1) that no such certificate shall be issued until the expiration of four days after the date of the receipt of the notice by such Minister ;

(2) that no lawful impediment be shown to his satisfaction why such certificate should not issue ; and

(Part III.—Marriages solemnized by Ministers of Religion licensed under this Act.)

(3) that the issue of such certificate has not been forbidden, in manner hereinafter mentioned, by any person authorized in that behalf.

Declaration before issue of certificate.

18. The certificate mentioned in section 17 shall not be issued until one of the persons intending marriage has appeared personally before the Minister and made a solemn declaration—

(*a*) that he or she believes that there is not any impediment of kindred or affinity or other lawful hindrance to the said marriage,

and, when either or both of the parties is or are a minor or minors,

(*b*) that the consent or consents required by law has or have been obtained thereto, or that there is no person resident in India having authority to give such consent, as the case may be.

Consent of father, or guardian, or mother.

19. The father, if living, of any minor, or, if the father be dead, the guardian of the person of such minor, and, in case there be no such guardian, then the mother of such minor, may give consent to the minor's marriage,

and such consent is hereby required for the same marriage, unless no person authorized to give such consent be resident in India.

Power to prohibit by notice issue of certificate.

20. Every person whose consent to a marriage is required under section 19 is hereby authorized to prohibit the issue of the certificate by any Minister, at any time before the issue of the same, by notice in writing to such Minister, subscribed by the person so authorized with his or her name and place of abode and position with respect to either of the persons intending marriage, by reason of which he or she is so authorized as aforesaid.

Procedure on receipt of notice.

21. If any such notice be received by such Minister, he shall not issue his certificate and shall not solemnize the said marriage until he has examined into the matter of the said prohibition, and is satisfied that the person prohibiting the marriage has no lawful authority for such prohibition,

or until the said notice is withdrawn by the person who give it.

Issue of certificate in case of minority.

22. When either of the persons intending marriage is a minor, and the Minister is not satisfied that the consent of the person whose consent to such marriage is required by section 19 has been obtained, such

(*Part III.—Marriages solemnized by Ministers of Religion licensed under this Act. Part IV.—Registration of Marriages solemnized by Ministers of Religion.*)

Minister shall not issue such certificate until the expiration of fourteen days after the receipt by him of the notice of marriage.

Issue of certificates to Indian Christians.

23. When any [1][Indian] Christian about to be married takes a notice of marriage to a Minister of Religion, or applies for a certificate from such Minister under section 17, such Minister shall, before issuing the certificate, ascertain whether such [1][Indian] Christian is cognizant of the purport and effect of the said notice or certificate, as the case may be, and, if not, shall translate or cause to be translated the notice or certificate to such [1][Indian] Christian into some language which he understands.

Form of certificate.

24. The certificate to be issued by such Minister shall be in the form contained in the second schedule hereto annexed, or to the like effect.

Solemnization of marriage.

25. After the issue of the certificate by the Minister, marriage may be solemnized between the person therein described according to such form or ceremony as the Minister thinks fit to adopt:

Provided that the marriage be solemnized in the presence of at least two witnesses besides the Minister.

Certificate void if marriage not solemnized within two months.

26. Whenever a marriage is not solemnized within two months after the date of the certificate issued by such Minister as aforesaid, such certificate and all proceedings (if any) thereon shall be void.

and no person shall proceed to solemnize the said marriage until new notice has been given and a certificate thereof issued in manner aforesaid.

PART IV.

REGISTRATION OF MARRIAGES SOLEMNIZED BY MINISTER OF RELIGION.

Marriages when to be registered.

27. All marriages hereafter solemnized in [2][a Part A State or a Part C State] between persons one or both of whom professes or profess the Christian religion, except marriages solemnized under Part V or Part VI of this Act, shall be registered[3] in manner hereinafter prescribed.

Registration of marriages solemnized by clergymen of Church of England.

28. Every Clergyman of the Church of England shall keep a register of marriages and shall register therein, according to the tabular form setforth in the third schedule hereto annexed, every marriage which he solemnizes under this Act.

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[1] Subs. by the A. O. 1950 for "Native".

[2] Subs. by the A. O. 1950 for "India".

[3] As to the establishment of general registry offices of births, deaths and marriages, *see* the Births, Deaths and Marriages Registration Act, 1886 (6 of 1886), Ch. II.

(*Part IV.—Registration of Marriages solemnized by Ministers of Religion.*)

29. Every Clergyman of the Church of England shall send four times in every year returns in duplicate, authenticated by his signature, of the entries in the register of marriages solemnized at any place where he has any spiritual charge, to the Registrar of the Archdeaconry to which he is subject, or within the limits of which such place is situate. **Quarterly return to Archdeaconry.**

Such quarterly returns shall contain all the entries marriages contained in the said register from the first day of January to the thirty-first day of March, from the first day of April to the thirtieth day of June, from the first day of July to the thirtieth day of September, and from the first day of October to the thirty-first day of December, of each year respectively, and shall be sent by such Clergyman within two weeks from the expiration of each of the quarters above specified. **Contents of returns.**

The said Registrar upon receiving the said returns shall send one copy thereof to the [1][Registrar General of Births, Deaths and Marriages.]

30. Every marriage solemnized by a Clergyman of the Church of Rome shall be registered by the person and according to the form directed in that behalf by the Roman Catholic Bishop of the Diocese or Vicariate in which such marriage is solemnized, **Registration and returns of marriages solemnized by Clergymen of Church of Rome.**

and such person shall forward quarterly to the [1][Registrar General of Births, Deaths and Marriages] returns of the entries of all marriages registered by him during the three months next preceding.

31. Every Clergyman of the Church of Scotland shall keep a register of marriages, **Registration and returns of marriages solemnized by Clergymen of Church of Scotland.**

and shall register therein, according to the tabular form set forth in the third schedule hereto annexed, every marriage which he solemnizes under this Act,

and shall forward quarterly to the [1][Registrar General of Births, Deaths and Marriages], through the Senior Chaplain of the Church of Scotland, returns, similar to those prescribed in section 29, of all such marriages.

32. Every marriage solemnized by any person who has received episcopal ordination, but who is not a Clergyman of the Church of England, or of the Church of Rome, or by any Minister of Religion licensed under this Act to solemnize marriages, shall, immediately after the solemnization thereof, be registered in duplicate by the person solemnizing the same; (that is to say) in a marriage-register-book to be kept by **Certain marriages to be registered in duplicate.**

[1] Subs. by the Births, Deaths and Marriages Registration Act, 1886 (6 of 1886), s. 30 (*b*), for "Secretary to the L. G.".

him for that purpose, according to the form contained in the fourth schedule hereto annexed, and also in a certificate attached to the marriage-register-book as a counterfoil.

Entries of such marriages to be signed and attested.

33. The entry of such marriage in both the certificate and marriage-register-book shall be signed by the person solemnizing the marriage, and also by the persons married, and shall be attested by two credible witnesses, other than the person solemnizing the marriage, present at its solemnization.

Every such entry shall be made in order from the beginning to the end of the book, and the number of the certificate shall correspond with that of the entry in the marriage-register-book.

Certificate to be forwarded to Marriage Registrar, copied and sent to Registrar General.

34. The person solemnizing the marriage shall forthwith separate the certificate from the marriage-register-book and send it, within one month from the time of the solemnization to the Marriage Registrar of the district in which the marriage was solemnized, or, if there be more Marriage Registrars than one, to the Senior Marriage Registrar,

who shall cause such certificate to be copied into a book to be kept by himf or that purpose,

and shall send all he certificates which he has received during the month, with such number and signature or initials added thereto as are hereinafter required, to the [1][Registrar General of Births, Deaths and Marriages].

Copies of certificates to be entered and numbered.

35. Such copies shall be entered in order from the beginning to the end of the said book and shall bear both the number of the certificate as copied, and also a number to be entered by the Marriage Registrar, indicating the number of the entry of the said copy in the said book, according to the order in which he receives each certificate.

Registrar to add number of entry to certificate, and send to Registrar General.

36. The Marriage Registrar shall also add such last-mentioned number of the entry of the copy in the book to the certificate, with his signature or initials, and shall, at the end of every month, send the same to the [1][Registrar General of Births, Deaths and Marriages].

Registration of marriages between Indian Christians.

37. When any marriage between [2][Indian] Christians is solemnized [3][by any such person, Clergyman or Minister of Religion as is referred to in clause (1), clause (2) or clause (3) of section 5], the person solemnizing the same shall, instead of proceeding in the manner provided by

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[1] Subs. by the Births, Deaths and Marriages Registration Act, 1886 (6 of 1886), s. 30 (*b*), for "Secretary to the L. G".

[2] Subs. by the A. O. 1950 for "Native".

[3] Subs. by the Repealing and Amending Act, 1928 (18 of 1928), s. 2 and Sch. I, for "under Part I or Part III of this Act".

(Part IV—Registration of Marriages solemnized by Ministers of Religion. Part V.—Marriages solemnized by, or in the presence of, a Marriage Registrar.)

sections 28 to 36, both inclusive, register the marriage in a separate register-book, and shall keep it safely until it is filled, or, if he leave the district in which he solemnized the marriage before the said book is filled, shall make over the same to the person succeeding to his duties in the said district.

by persons referred to in clauses (1), (2) and (3) of section 5.

Whoever has the control of the book at the time when it is filled, shall send it to the Marriage Registrar of the district, or if there be more Marriage Registrars than one, to the Senior Marriage Registrar, who shall send it to the [1][Registrar General of Births, Deaths and Marriages,] to be kept by him with the records of his office.

Custody and disposal of register-book.

PART V.

MARRIAGE SOLEMNIZED BY, OR IN THE PRESENCE OF, A MARRIAGE REGISTRAR.

38. When a marriage is intended to be solemnized by, or in the presence of, a Marriage Registrar, one of the parties to such marriage shall give notice in writing, in the form contained in the first schedule hereto annexed, or to the like effect, to any Marriage Registrar of the District within which the parties have dwelt;

Notice of intended marriage before Marriage Registrar.

or, if the parties dwell in different districts, shall give the like notice to a Marriage Registrar of each district,

and shall state therein the name and surname, and the profession or condition, of each of the parties intending marriage, the dwelling-place of each of them, the time during which each has dwelt therein, and the place at which the marriage is to be solemnized:

Provided that, if either party has dwelt in the place stated in the notice for more than one month, it may be stated therein that he or she has dwelt there one month and upwards.

39. Every Marriage Registrar shall, on receiving any such notice, cause a copy thereof to be affixed in some conspicuous place in his office.

Publication of notice.

When one of the parties intending marriage is a minor, every Marriage Registrar shall, within twenty-four hours after the receipt by him of the notice of such marriage, send, by post or otherwise, a copy of such notice

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[1] Subs. by the Births, Deaths and Marriages Registration Act, 1886 (6 of 1886), s. 30 (*b*), for "Secretary to the L. G."

to each of the other Marriage Registrars (if any) in the same district, who shall likewise affix the copy in some conspicuous place in his own office.

Notice to be filed and copy entered in Marriage Notice Book.

40. The Marriage Registrars shall file all such notices and keep them with the records of his office,

and shall also forthwith enter a true copy of all such notices in a book to be furnished to him for that purpose by the [1][State Government] and to be called the "Marriage Notice Book";

and the Marriage Notice Book shall be open at all reasonable times, without fee, to all persons desirous of inspecting the same.

Certificate of notice given and oath made.

41. If the party by whom the notice was given requests the Marriage Registrar to issue the certificate next hereinafter mentioned, and if one of the parties intending marriage has made oath as hereinafter required, the Marriage Registrar shall issue under his hand a certificate of such notice having been given and of such oath having been made:

Proviso.

Provided—

that no lawful impediment be shown to his satisfaction why such certificate should not issue;

that the issue of such certificate has not been forbidden, in manner hereinafter mentioned, by any person authorized in that behalf by this Act;

that four days after the receipt of the notice have expired; and further,

that where, by such oath, it appears that one of the parties intending marriage is a minor, fourteen days after the entry of such notice have expired.

Oath before issue of certificate.

42. The certificate mentioned in section 41 shall not be issued by any Marriage Registrar, until one of the parties intending marriage appears personally before such Marriage Registrar, and makes oath[2]—

(*a*) that he or she believes that there is not any impediment of kindred or affinity, or other lawful hindrance, to the said marriage, and

(*b*) that both the parties have, or (where they dwelt in the districts of different Marriage Registrars) that the party making such

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[1] Subs. by the A. O. 1950 for "Provincial Government" which had been subs. by the A. O. 1937 for "L. G.".

[2] As to the meaning of "oath", see the General Clauses Act, 1897 (10 of 1897), s. 3 (37) and s. 4.

(*Part V.—Marriages solemnized by, or in the presence of, a Marriage Registrar.*)

oath has, had their, his or her usual place of abode within the district of such Marriage Registrar,

and, where either or each of the parties is a minor,—

(*c*) that the consent or consents to such marriage required by law has or have been obtained thereto, or that there is no person resident in India authorized to give such consent, as the case may be.

43. When one of the parties intending marriage is a minor, and both such parties are at the time resident in any of the towns of Calcutta, Madras and Bombay, and are desirous of being married in less than fourteen days after the entry of such notice as aforesaid, they may apply by petition to a Judge of the High Court, for an order upon the Marriage Registrar to whom the notice of marriage has been given, directing him to issue his certificate before the expiration of the said fourteen days required by section 41.

Petition to High Court to order certificate in less than fourteen days.

And, on sufficient cause being shown, the said Judge may, in his discretion, make an order upon such Marriage Registrar, directing him to issue his certificate at any time to be mentioned in the said order before the expiration of the fourteen days so required.

Order on petition.

And the said Marriage Registrar, on receipt of the said order, shall issue his certificate in accordance therewith.

44. The provisions of section 19 apply to every marriage under this Part, either of the parties to which is a minor;

Consent of father or guardian.

and any person whose consent to such marriage would be required thereunder may enter a protest against the issue of the Marriage Registrar's certificate, by writing, at any time before the issue of such certificate, the word "forbidden" opposite to the entry of the notice of such intended marriage in the Marriage Notice Book, and by subscribing thereto his or her name and place of abode, and his or her position with respect to either of the parties, by reason of which he or she is so authorized

Protest against issue of certificate.

When such protest has been entered, no certificate shall issue until the Marriage Registrar has examined into the matter of the protest, and is satisfied that it ought not to obstruct the issue of the certificate for the said marriage, or until the protest be withdrawn by the person who entered it.

Effect of protest.

45. If any person whose consent is necessary to any marriage under this Part is of unsound mind,

Petition where person

(Part V.—Marriages solemnized by, or in the presence of, a Marriage Registrar.)

whose consent is necessary is insane, or unjustly withholds consent.

or if any such person (other than the father) without just cause withholds his consent to the marriage,

the parties intending marriage may apply by petition, where the person whose consent is necessary is resident within any of the towns of Calcutta, Madras and Bombay, to a Judge of the High Court, or if he is not resident within any of the said towns, then to the District Judge:

Procedure on petition.

And the said Judge of the High Court, or District Judge, as the case may be, may examine the allegations of the petition in a summary way:

and, if upon examination such marriage appears proper, such Judge of the High Court or District Judge, as the case may be, shall declare the marriage to be a proper marriage.

Such declaration shall be as effectual as if the person whose consent was needed had consented to the marriage;

and, if he has forbidden the issue of the Marriage Registrar's certificate, such certificate shall be issued and the like proceedings may be had under this Part in relation to the marriage as if the issue of such certificate had not been forbidden.

Petition when Marriage Registrar refuses certificate.

46. Whenever a Marriage Registrar refuses to issue a certificate under this Part, either of the parties intending marriage may apply by petition, where the district of such Registrar is within any of the towns of Calcutta, Madras and Bombay, to a Judge of the High Court, or if such district is not within any of the said towns, then to the District Judge.

Procedure on petition.

The said Judge of the High Court, or District Judge, as the case may be, may examine the allegations of the petition in a summary way, and shall decide thereon.

The decision of such Judge of the High Court or District Judge, as the case may be, shall be final, and the Marriage Registrar to whom the application for the issue of a certificate was originally made shall proceed in accordance therewith.

47. [*Petition when Marriage Registrar in Indian State refuses certificate.*] *Rep. by the A. O. 1950.*

(*Part V.—Marriages solemnized by, or in the presence of, a Marriage Registrar.*)

48. Whenever a Marriage Registrar, acting under the provisions of section 44, is not satisfied that the person forbidding the issue of the certificate is authorized by law so to do, the said Marriage Registrar shall apply by petition, where his district is within any of the towns of Calcutta, Madras and Bombay, to a Judge of the High Court, or, if such district be not within any of the said towns, then to the District Judge. **Petition when Registrar doubts authority of person forbidding.**

The said petition shall state all the circumstances of the case, and pray for the order and direction of the Court concerning the same, **Procedure on petition.**

and the said Judge of the High Court or District Judge, as the case may be, shall examine into the allegations of the petition and the circumstances of the case;

and if, upon such examination, it appears, that the person forbidding the issue of such certificate is not authorized by law so to do, such Judge of the High Court or District Judge as the case may be, shall declare that the person forbidding the issue of such certificate is not authorized as aforesaid,

and thereupon such certificate shall be issued, and the like proceedings may be had in relation to such marriage as if the issue had not been forbidden

[1] * * * * *

49. Every person entering a protest with the Marriage Registrar, under this Part, against the issue of any certificate, on grounds which such Marriage Registrar, under section 44, or a Judge of the High Court or the District Judge, under section 45 or 46, declares to be frivolous and such as ought not to obstruct the issue of the certificate, shall be liable for the costs of all proceedings in relation thereto and for damages, to be recovered by suit by the person against whose marriage such protest was entered. **Liability for frivolous protest against issue of certificate.**

[1] The last three paragraphs were rep. by the A. O. 1950.

(*Part V.—Marriages solemnized by, or in the presence of, a Marriage Registrar.*)

Form of certificate.

50. The certificate to be issued by the Marriage Registrar under the provisions of section 41 shall be in the form contained in the second schedule to this Act annexed or to the like effect,

and the [1][State Government] shall furnish to every Marriage Registrar a sufficient number of forms of certificate.

Solemnization of marriage after issue of certificate.

51. After the issue of the certificate of the Marriage Registrar,

or, where notice is required to be given under this Act to the Marriage Registrars for different districts, after the issue of the certificates of the Marriage Registrars for such districts,

marriage may, if there be no lawful impediment to the marriage of the parties described in such certificate or certificates, be solemnized between them, according to such form and ceremony as they think fit to adopt.

But every such marriage shall be solemnized in the presence of some Marriage Registrar (to whom shall be delivered such certificate or certificates as aforesaid), and of two or more credible witnesses besides the Marriage Registrar.

And in some part of the ceremony each of the parties shall declare as follows, or to the like effect:—

"I do solemnly declare that I know not of any lawful impediment why I, *A. B.*, may not be joined in matrimony to *C. D.*"

And each of the parties shall say to the other as follows or to the like effect:—"I call upon these persons here present to witness that I, *A. B.*, do take thee, *C. D.*, to be my lawful wedded wife [*or* husband]."

When marriage not had within two months after notice, new notice required.

52. Whenever a marriage is not solemnized within two months after the copy of the notice has been entered by the Marriage Registrar, as required by section 40, the notice and the certificate, if any, issued thereupon, and all other proceedings thereupon, shall be void;

and no person shall proceed to solemnize the marriage nor shall any Marriage Registrar enter the same, until new notice has been given, and entry made and certificate thereof given at the time and in the manner aforesaid.

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[1] Subs. by the A. O. 1950 for "Provincial Government" which had been subs. by the A. O. 1937 for "L. G.".

(*Part V.—Marriages solemnized by, or in the presence of, a Marriage Registrar.*)

53. A Marriage Registrar before whom any marriage is solemnized under this Part may ask of the persons to be married the several particulars required to be registered touching such marriage.

Marriage Registrar may ask for particulars to be registered.

54. After the solemnization of any marriage under this Part, the Marriage Registrar present at such solemnization shall forthwith register the marriage in duplicate; that is to say, in a marriage-register-book, according to the form of the fourth schedule hereto annexed, and also in a certificate attached to the marriage-register-book as a counterfoil.

Registration of marriage solemnized under Part V.

The entry of such marriage in both the certificate and the marriage-register-book shall be signed by the person by or before whom the marriage has been solemnized, if there be any such person, and by the Marriage Registrar present at such marriage, whether or not it is solemnized by him, and also by the parties married, and attested by two credible witnesses other than the Marriage Registrar and person solemnizing the marriage.

Every such entry shall be made in order from the beginning to the end of the book, and the number of the certificate shall correspond with that of the entry in the marriage-register-book.

55. The Marriage Registrar shall forthwith separate the certificate from the marriage-register-book and send it, at the end of every month, to the [1][Registrar General of Births, Deaths and Marriages].

Certificates to be sent monthly to Registrar General.

The Marriage Registrar shall keep safely the said register-book until it is filled, and shall then send it to the [1][Registrar General of Births, Deaths and Marriages], to be kept by him with the records of his office.

Custody of register-book.

56. [*Officers to whom Registrars in Indian States shall send certificates.*] *Rep. by the A. O. 1950.*

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[1] Subs. by the Births, Deaths and Marriages Registration Act, 1886 (6 of 1886), s. 30(*b*), for "Secretary to the L. G."

(*Part V.—Marriages solemnized by, or in the presence of, a Marriage Registrar. Part VI.—Marriage of Indian Christians.*)

Registrars to ascertain that notice and certificate are understood by Indian Christians.

57. When any [1][Indian] Christian about to be married gives a notice of marriage, or applies for a certificate from a Marriage Registrar, such Marriage Registrar shall ascertain whether the said [1][Indian] Christian understands the English language, and, if he does not, the Marriage Registrar shall translate, or cause to be translated, such notice or certificate, or both of them, as the case may be, to such [1][Indian] Christian into a language which he understands;

or the Marriage Registrar shall otherwise ascertain whether the [1][Indian] Christian is cognizant of the purport and effect of the said notice and certificate.

Indian Christians to be made to understand declarations.

58. When any [1][Indian] Christian is married under the provisions of this Part, the person solemnizing the marriage shall ascertain whether such [1][Indian] Christian understands the English language, and, if he does not, the person solemnizing the marriage shall, at the time of the solemnization, translate, or cause to be translated, to such [1][Indian] Christian, into a language which he understands, the declarations made at such marriage in accordance with the provisions of this Act.

Registration of marriages between Indian Christians.

59. The registration of marriages between [1][Indian] Christians under this Part shall be made in conformity with the rules laid down in section 37 (so far as they are applicable), and not otherwise.

PART VI.[2]

MARRIAGE OF [1][INDIAN] CHRISTIANS.

On what conditions marriages of Indian Christians may be certified.

60. Every marriage between [1][Indian] Christians applying for a certificate shall, without the preliminary notice required under Part III, be certified under this Part, if the following conditions be fulfilled, and not otherwise:—

(1) the age of the man intending to be married shall exceed sixteen years, and the age of the woman intending to be married shall exceed thirteen years;

(2) neither of the persons intending to be married shall have a wife or husband still living;

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[1] Subs. by the A. O. 1950 for "Native".

[2] As to validation of past marriages solemnized under Part VI between persons of whom one only was an Indian Christian, and penalty for solemnizing such marriages under Part VI in future, *see* the Marriages Validation Act, 1892 (2 of 1892).

(3) in the presence of a person licensed under section 9, and of at least two credible witnesses other than such person, each of the parties shall say to the other—

"I call upon these persons here present to witness that I, *A. B.*, in the presence of Almighty God, and in the name of our Lord Jesus Christ, do take thee, *C. D.*, to be my lawful wedded wife [*or* husband]" or words to the like effect:

Provided that no marriage shall be certified under this Part when either of the parties intending to be married has not completed his or her eighteenth year, unless such consent as is mentioned in section 19 has been given to the intended marriage, or unless it appears that there is no person living authorized to give such consent.

Grant of certificate.

61. When, in respect to any marriage solemnized under this Part, the conditions prescribed in section 60 have been fulfilled, the person licensed as aforesaid, in whose presence the said declaration has been made, shall, on the application of either of the parties to such marriage, and on the payment of a fee of four annas, grant a certificate of the marriage.

The certificate shall be signed by such licensed person, and shall be received in any suit touching the validity of such marriage as conclusive proof of its having been performed

Keeping of register-book and deposit of extracts therefrom with Registrar General.

[1][**62.** (*1*) Every person licensed under section 9 shall keep in English, or in the vernacular language in ordinary use in the district or State in which the marriage was solemnized, and in such form as the [2][State Government] by which he was licensed may from time to time prescribe, a register-book of all marriages solemnized under this Part in his presence, and shall deposit in the office of the Registrar General of Births, Deaths and Marriages for the territories under the administration of the said [2][State Government] in such form and at such intervals as that Government may prescribe, true and duly authenticated extracts from his register-book of all entries made therein since the last of those intervals.

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[1] Subs. by the Indian Christian Marriage Act (1872) Amendment Act, 1891 (2 of 1891), s. 4, for the original s. 62.

[2] Subs. by the A. O. 1950 for "Provincial Government" which had been subs. by the A. O 1937 for "L. G."

(*Part VI.—Marriage of Native Christians. Part VII—Penalties.*)

[1]* * * * *

Searches in register-book and copies of entries.

63. Every person licensed under this Act to grant certificates of marriage, and keeping a marriage-register-book under section 62, shall, at all reasonable times, allow search to be made in such book, and shall on payment of the proper fee, give a copy, certified under his hand, of an entry therein.

Books in which marriages of Indian Christians under Part I or Part III are registered.

64. The provisions of sections 62 and 63, as to the form of the register-book, depositing extracts therefrom, allowing searches thereof, and giving copies of the entries therein, shall, *mutatis mutandis*, apply to the books kept under section 37.

Part VI not to apply to Roman Catholics. Saving of certain marriages.

65. This Part of this Act, except so much of sections 62 and 63 as are referred to in section 64, shall not apply to marriages between Roman Catholics. But nothing herein contained shall invalidate any marriage celebrated between Roman Catholics under the provisions of Part V of Act No. XXV of 1864[2], previous to the twenty-third day of February, 1865.

PART VII

PENALTIES

False oath, declaration, notice or certificate for procuring marriage.

[3][**66.** Whoever, for the purpose of procuring a marriage or license of marriage, intentionally,—

(*a*) where an oath or declaration is required by this Act, or by any rule or custom of a Church according to the rites and ceremonies of which a marriage is intended to be solemnized,

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[1] Sub-section (2) of s. 62 as amended by the A. O. 1937 was rep. by the A. O. 1950.

[2] Act 25 of 1864 had been rep. by Act 5 of 1865, which was rep. by this Act.

[3] Subs. by the Indian Christian Marriage Act (1872) Amendment Act, 1891 (2 of 1891), s. 5, for the original s. 66.

such Church being the Church of England or of Scotland or of Rome, makes a false oath or declaration, or,

(*b*) where a notice or certificate is required by this Act, signs a false notice or certificate,

shall be deemed to have committed the offence punishable under section 193 of the Indian Penal Code with imprisonment of either description for a term which may extend to three years and, at the discretion of the Court, with fine.]

XLV of 1860.

67. Whoever forbids the issue, by a Marriage Registrar, of a certificate, by falsely representing himself to be a person whose consent to the marriage is required by law, knowing or believing such representation to be false, or not having reason to believe it to be true, shall be deemed guilty of the offence described in section 205 of the Indian Penal Code.

Forbidding, by false personation, issue of certificate by Marriage Registrar.

XLV of 1860.

[1][**68.** Whoever, not being authorized by section 5 of this Act to solemnize marriages, solemnizes or professes to solemnize in the absence of a Marriage Registrar of the district in which the ceremony takes place, a marriage between persons one or both of whom is or are a Christian or Christians, shall be punished with imprisonment which may extend to ten years, or (in lieu of a sentence of imprisonment for seven years or upwards) with transportation for a term of not less than seven years, and not exceeding ten years.

Solemnizing marriage without due authority.

[2]* * * * *

and shall also be liable to fine.]

69. Whoever knowingly and wilfully solemnizes a marriage between persons one or both of whom is or are a Christian or Christians, at any time other than between the hours of six in the morning and seven in the evening, or in the absence of at least two credible witnesses other than the person solemnizing the marriage, shall be punished with imprisonment for a term which may extend to three years, and shall also be liable to fine.

Solemnizing marriage out of proper time, or without witnesses.

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[1] Subs. by the Indian Christian Marriage Act (1872) Amendment Act, 1891 (2 of 1891), s. 6, for the original s. 68.

[2] The second para. as amended by Act 12 of 1891 was rep. by the A. O. 1950.

Saving of marriages solemnized under special license.

This section does not apply to marriages solemnized under special licenses granted by the Anglican Bishop of the Diocese or by his Commissary, nor to marriages performed between the hours of seven in the evening and six in the morning by a Clergyman of the Church of Rome, when he has received the general or special license in that behalf mentioned in section 10.

[1][Nor does this section apply to marriages solemnized by a Clergyman of the Church of Scotland according to the rules, rites, ceremonies and customs of the Church of Scotland.]

Solemnizing, without notice or within fourteen days after notice, marriage with minor.

70. Any Minister of Religion licensed to solemnize marriages under this Act, who, without a notice in writing, or, when one of the parties to the marriage is a minor, and the required consent of the parents or guardians to such marriage has not been obtained, within fourteen days after the receipt by him of notice of such marriage, knowingly and wilfully solemnizes a marriage under Part III, shall be punished with imprisonment for a term which may extend to three years, and shall also be liable to fine.

Issuing certificate, or marrying without publication of notice;

71. A Marriage Registrar under this Act, who commits any of the following offences:—

(1) knowingly and wilfully issues any certificate for marriage, or solemnizes any marriage, without publishing the notice of such marriage as directed by this Act;

marrying after expiry of notice;

[2][(2) after the expiration of two months after the copy of the notice has been entered as required by section 40 in respect of any marriage, solemnizes such marriage;]

solemnizing marriage with minor within fourteen days without authority of Court, or without sending copy of notice; issuing certificate against authorized prohibition.

(3) solemnizes, without any order of a competent Court authorizing him to do so, any marriage, when one of the parties is a minor, before the expiration of fourteen days after the receipt of the notice of such marriage, or without sending, by the post or otherwise, a copy of such notice to the Senior Marriage Registrar of the district if there be more Marriage Registrars of the district than one, and if he himself be not the Senior Marriage Registrar;

(4) issues any certificate the issue of which has been prohibited, as in this Act provided, by any person authorized to prohibit the issue thereof.

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[1] Ins. by the Indian Christian Marriage Act (1872) Amendment Act, 1891 (2 of 1891), s. 7.

[2] Subs by s. 8 (*1*), *ibid.*, for the original cl. (2).

shall be punished with imprisonment for a term which may extend to five years, and shall also be liable to fine.

72. Any Marriage Registrar knowingly and wilfully issuing any certificate for marriage after the expiration of [1][two months] after the notice has been entered by him as aforesaid,

Issuing certificate after expiry of notice, or, in case of minor, within fourteen days after notice, or against authorized prohibition.

or knowingly and wilfully issuing, without the order of a competent Court authorizing him so to do, any certificate for marriage, where one of the parties intending marriage is a minor, before the expiration of fourteen days after the entry of such notice, or any certificate the issue of which has been forbidden as aforesaid by any person authorized in this behalf,

shall be deemed to have committed an offence under section 166 of the Indian Penal Code.

73. Whoever, being authorized under this Act to solemnize a marriage,

Persons authorized to solemnize marriage (other than Clergy of Churches of England, Scotland or Rome):

and not being a Clergyman of the Church of England, solemnizing a marriage after due publication of banns, or under a license from the Anglican Bishop of the Diocese or a Surrogate duly authorized in that behalf,

or, not being a Clergyman of the Church of Scotland, solemnizing a marriage according to the rules, rites, ceremonies and customs of that church,

or, not being a Clergyman of the Church of Rome, solemnizing a marriage according to the rites, rules, ceremonies and customs of that church,

knowingly and wilfully issues any certificate for marriage under this Act, or solemnizes any marriage between such persons as aforesaid, without publishing, or causing to be affixed, the notice of such marriage as directed in Part III of this Act, or after the expiration of two months after the certificate has been issued by him;

issuing certificate, or marrying without publishing notice, or after expiry of certificate;

or knowingly and wilfully issues any certificate for marriage, or solemnizes a marriage between such persons when one of the persons intending marriage is a minor, before the expiration of fourteen days after the receipt of notice of such marriage, or without sending, by the post or otherwise, a copy of such notice to the Marriage Registrar, or, if

issuing certificate for, or solemnizing, marriage with minor within fourteen

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[1] Subs. by the Indian Christian Marriage Act (1872) Amendment Act, 1891 (2 of 1891), s. 8 (2), for "three months".

days after notice;

there be more Marriage Registrars than one, to the Senior Marriage Registrar of the district;

issuing certificate authorizedly forbidden;

or knowingly and wilfully issues any certificate the issue of which has been forbidden, under this Act, by any person authorized to forbid the issue;

solemnizing marriage authorizedly forbidden.

or knowingly and wilfully solemnizes any marriage forbidden by any person authorized to forbid the same;

shall be punished with imprisonment for a term which may extend to four years, and shall also be liable to fine.

Unlicensed person granting certificate pretending to be licensed.

74. Whoever, not being licensed to grant a certificate of marriage under Part VI of this Act, grants such certificate intending thereby to make it appear that he is so licensed, shall be punished with imprisonment for a term which may extend to five years, and shall also be liable to fine.

[1][Whoever, being licensed to grant certificates of marriage under Part VI of this Act, without just cause refuses, or wilfully neglects or omits, to perform any of the duties imposed upon him by that Part shall be punished with fine which may extend to one hundred rupees.]

Destroying or falsifying register-books.

75. Whoever, by himself or another, wilfully destroys or injures any register-book or the counterfoil certificates thereof, or any part thereof, or any authenticated extract therefrom,

or falsely makes or counterfeits any part of such register-book or counterfoil certificates,

or wilfully inserts any false entry in any such register-book or counterfoil certificate or authenticated extract,

shall be punished with imprisonment for a term which may extend to seven years, and shall also be liable to fine.

Limitation of prosecutions under Act.

76. The prosecution for every offence punishable under this Act shall be commenced within two years after the offence is committed.

PART VIII

MISCELLANEOUS

What matters need not be proved in respect of marriage in accordance with Act.

77. Whenever any marriage has been solemnized in accordance with the provisions of sections 4 and 5, it shall not be void merely on account of any irregularity in respect of any of the following matters, namely:—

(1) any statement made in regard to the dwelling of the persons married, or to the consent of any person whose consent to such marriage is required by law:

[1] Ins. by the Indian Christian Marriage Act (1872) Amendment Act, 1891 (2 of 1891), s. 9.

(2) the notice of the marriage:
(3) the certificate or translation thereof:
(4) the time and place at which the marriage has been solemnized:
(5) the registration of the marriage.

Correction of errors.

78. Every person charged with the duty of registering any marriage, who discovers any error in the form or substance of any such entry, may, within one month next after the discovery of such error, in the presence of the persons married, or, in case of their death or absence, in the presence of two other credible witnesses, correct the error, by entry in the margin, without any alteration of the original entry, and shall sign the marginal entry, and add thereto the date of such correction, and such person shall make the like marginal entry in the certificate thereof.

And every entry made under this section shall be attested by the witnesses in whose presence it was made.

And in case such certificate has been already sent to the [1][Registrar General of Births, Deaths and Marriages], such person shall make and send in like manner a separate certificate of the original erroneous entry, and of the marginal correction therein made.

Searches and copies of entries.

79. Every person solemnizing a marriage under this Act, and hereby required to register the same,

and every Marriage Registrar or [2][Registrar General of Births, Deaths and Marriages] having the custody for the time being of any register of marriages, or of any certificate, or duplicate or copies of certificate, under this Act,

shall, on payment of the proper fees, at all reasonable times, allow searches to be made in such register, or for such certificate, or duplicate, or copies, and give a copy under his hand of any entry in the same.

Certified copy of entry in marriage-register, etc., to be evidence.

80. Every certified copy, purporting to be signed by the person entrusted under this Act with the custody of any marriage-register or certificate, or duplicate, required to be kept or delivered under this Act, of an entry of a marriage in such register, or of any such certificate or duplicate, shall be received as evidence of the marriage purporting to be so entered, or of the facts purporting to be so certified therein, without further proof of such register or certificate or duplicate, or of any entry therein, respectively, or of such copy.

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[1] Subs. by the Births, Deaths and Marriages Registration Act, 1886 (6 of 1886), s. 30 (*b*), for "Secretary to the L. G."

[2] Subs. by s. 30 (*b*), *ibid.*, for "Secretary to a L. G."

(*Part VIII.—Miscellaneous.*)

Certificates of certain marriages to be sent to Central Government.

[1][81. The Registrar General of Births, Deaths and Marriages, and the officers appointed under section 56 shall, at the end of every quarter in each year, select, from the certificates of marriages forwarded to them, respectively, during such quarter, the certificates of the marriages of which [2][the Government by whom he was appointed] may desire that evidence shall be transmitted to England, and shall send the same certificates, signed by them respectively, to the [3][Central Government]].

State Government to prescribe fees.

82. Fees shall be chargeable under this Act for—

receiving and publishing notices of marriages;

issuing [4][certificates for marriage] by Marriage Registrars, and registering marriages by the same;

entering protests against, or prohibitions of, the issue of [5][certificates for marriages] by the said Registrars;

searching register-books or certificates, or duplicates of copies thereof;

giving copies of entries in the same under sections 63 and 79.

The [6][State Government] shall fix the amount of such fees respectively,

and may from time to time vary or remit them either generally or in special cases, as to it may seem fit

Power to make rules.

83. The [6][State Government] may make rules in regard to the disposal of the fees mentioned in section 82, the supply of register-books, and the preparation and submission of returns of marriages solemnized under this Act.

84. [*Power to prescribe fees and rules for Indian States*]—*Rep. by the A. O. 1950.*

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[1] Subs. by the Indian Christian Marriage (Amendment) Act, 1911 (13 of 1911), s. 2, for original s. 81.

[2] Subs. by the A. O. 1937 for "the G. G. in C."

[3] Subs. by the A. O. 1948 for "Secretary of State for India".

[4] Subs. by the Repealing and Amending Act, 1903 (1 of 1903), s. 3 and Sch II, for "certificate of marriages."

[5] Subs. by s. 3 and Sch. II, *ibid.*, for "marriage certificates."

[6] Subs. by the A. O. 1950 for "Provincial Government" which had been subs by the A. O. 1937 for "L. G."

(Part VIII.—Miscellaneous.)

85. The [1][State Government] may, by notification in the Official Gazette, declare who shall, in any place to which this Act applies, be deemed to be the District Judge. **Power to declare who shall be District Judge.**

86. [*Powers and functions exercisable as regards Indian States.*]—*Rep. by the A. O. 1950.*

87. Nothing in this Act applies to any marriage performed by any Minister, Consul or Consular Agent between subjects of the State which he represents and according to the laws of such State. **Saving of Consular marriages.**

88. Nothing in this Act shall be deemed to validate any marriage which the personal law applicable to either of the parties forbids him or her to enter into. **Non-validation of marriages within prohibited degrees.**

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[1] Subs. by the A. O. 1950 for "Provincial Government" which had been subs. by the A. O 1937 for "L. G"

(*Schedule I.—Notice of Marriage.*)

SCHEDULE I.

(*See sections 12 and 38.*)

NOTICE OF MARRIAGE

To a Minister [*or* Registrar] of

I hereby give you notice that a marriage is intended to be had, within three calendar months from the date hereof, between me and the other party herein named and described (that is to say):

Names.	Condition.	Rank or profession.	Age.	Dwelling place.	Length of residence.	Church, chapel or place of worship in which the marriage is to be solemnized.	District in which the other party resides, when the parties dwell in different districts.
James Smith.	*Widower.*	*Carpenter.*	*Of full age.*	*16, Clive Street.*	*23 days.*	*Free Church of Scotland Church, Calcutta.*	
Martha Green.	*Spinster.*	....	*Minor.*	*20, Hastings Street.*	*More than a month.*		

Witness my hand, this day of *seventy-two.*

(*Signed*) *JAMES SMITH*

[The *italics* in this schedule are to be filled up, as the case may be, and the blank division thereof is only to be filled up when one of the parties lives in another district.]

(*Schedule II.—Certificate of Receipt of Notice.*)

SCHEDULE II.

(*See sections 24 and 50.*)

CERTIFICATE OF RECEIPT OF NOTICE.

I,

do hereby certify that, on the day of , notice was duly entered in my Marriage Notice Book of the marriage intended between the parties therein named and described, delivered under the hand of one of the parties (that is to say):—

Names	Condition.	Rank or Profession.	Age.	Dwelling place.	Length of residence.	Church, chapel or place of worship in which the marriage is to be solemnized.	District in which the other party resides, when the parties dwell in different districts.
James Smith.	*Widower.*	*Carpenter.*	*Of full age.*	*16, Clive Street.*	*23 days.*	*Free Church of Scotland Church. Calcutta.*	
Martha Green.	*Spinster.*	....	*Minor.*	*20, Hastings Street.*	*More than a month.*		

and that the declaration, [1][or oath] required by section 17 or 41 of the Indian Christian Marriage Act, 1872 has been duly made by the said (*James Smith*).

XV of 1972

Date of notice entered } The issue of this certificate has not been prohibited by any person authorized to forbid the issue thereof.

Date of certificate given }

Witness my hand, this day of *seventy-two.*

(*Signed*)

This certificate will be void, unless the marriage is solemnized on or before the day of

[The *italics* in the schedule are to be filled up, as the case may be, and the blank division thereof is only to be filled up when one of the parties lives in another district.]

[1] Ins. by the Repealing and Amending Act, 1903 (1 of 1903), s. 3.

(*Schedule III.—Form of Register of Marriages.*)

SCHEDULE III.

(*See sections 28 and 31.*[1])

FORM OF REGISTER OF MARRIAGES.

Quarterly Returns

of

MARRIAGES

for

The Archdeaconry of { *Calcutta.* / *Madras.* / *Bombay.*

I, , Registrar of the Archdeaconry of { *Calcutta,* / *Madras,* / *Bombay,*

do hereby certify that the annexed are correct copies of the originals and Official Quarterly Returns of Marriage within the Archdeaconry of { *Calcutta,* / *Madras,* / *Bombay,* } as made and transmitted to me for the quarter commencing the day of ending the day of in the year of Our Lord

[*Signature of Registrar.*]

Registrar of the Archdeaconry of { *Calcutta.* / *Madras.* / *Bombay.*

MARRIAGES solemnized at { *Allahabad,* / *Barrackpore,* / *Bareilly,* / *Calcutta, etc. etc.*

When Married			Names of Parties.			Condition.	Rank or profession.	Residence at the time of marriage.	Father's name and surname.	By banns or license.	Signatures of the parties.	Signatures of two or more witnesses present.	Signature of the person solemnizing the marriage.
Year.	Month	Day.	Christian.	Surname.	Age.								

[1] Subs. by the Amending Act, 1891 (12 of 1891), Sch. II, for the original reference.

(Schedule IV—Marriage Register Book)

SCHEDULE IV.

(*See sections 32 and 54*)

MARRIAGE REGISTER BOOK

Number.	When Married			Names of Parties		Age	Condition	Rank or profession	Residence at the time of marriage	Father's name and surname
	Day	Month	Year	Christian name.	Surname					
				James	*White*	*26 years*	*Widower*	*Carpenter*	*Agra*	*William White*
				Martha	*Duncan*	*17 years*	*Spinster*		*Agra*	*John Duncan*

Married in the

This marriage was solemnized between us { *James White.* / *Martha Duncan* } in the presence of us { *John Smith* / *John Green* }

(Schedule IV.—Marriage Register Book.)

CERTIFICATE OF MARRIAGE.

Number.	When Married.			Names of Parties.		Age.	Condition.	Rank or profession.	Residence at the time of marriage.	Father's name and surname
	Day.	Month.	Year.	Christian name.	Surname.					
1				*James*	*White*	*26 years*	*Widower*	*Carpenter*	*Agra*	*William White.*
				Martha	*Duncan*	*17 years*	*Spinster*	..	*Agra*	*John Duncan.*

Married in the

This marriage was solemnized between us { *James White,* / *Martha Duncan,* } in the presence of us { *John Smith.* / *John Green.* }

SCHEDULE V.—[ENACTMENTS REPEALED.] Rep. by the Repealing Act, 1938 (I of 1938) s. 2 and Sch.

THE MADRAS CIVIL COURTS ACT, 1873.

CONTENTS.

Preamble.

PART I.

PRELIMINARY.

SECTIONS.

1. Short title.

Local extent.

Commencement.

2. [*Repealed.*]

PART II.

ESTABLISHMENT AND CONSTITUTION OF CIVIL COURTS.

3. Number of District Courts.

3-A. Appointment of Additional District Judges.

4. Number of Subordinate Judges and District Munsifs

4-A. Appointment of Additional Subordinate Judges and Additional District Munsifs.

5. Court's locality.

6 and 7. [*Repealed.*]

8. District Courts, Subordinate Judges and District Munsifs.

9. Seal of Court.

PART III.

JURISDICTION.

SECTIONS.

10. Local limits of jurisdiction of District Court or Subordinate Judge.

11. Local jurisdiction of District Munsifs

12. Jurisdiction of District Judge or Subordinate Judge in original suits.

Jurisdiction of District Munsif.

13. Appeals from decrees of District Courts.

Appellate jurisdiction of District Court.

Appellate jurisdiction of Subordinate Judge.

Disposal of appeal by District Judge.

14. Valuation of suits for immovable property.

15. Power to require witness or party to make oath or affirmation

16 Law administered by Courts to Natives

17. Judges not to try suits in which they are interested; nor to try appeals from decrees passed by them in other capacities

Mode of disposing of such suits and appeals

PART IV.

MISCONDUCT OF JUDGES.

SECTIONS.

18 to 21. [*Repealed.*]

PART V.

MINISTERIAL OFFICES.

22 and 23. [*Repealed.*]

24. Duties of Ministerial Officers.

PART VI.

MISCELLANEOUS.

24-A. Appointment of Subordinate Judge for two or more districts.

25. Temporary discharge of duties of District Judge.

26. [*Repealed.*]

27. District Judge to control Civil Courts of district.

28. Investiture of Subordinate Judge with Small Cause jurisdiction. Investiture of District Munsif with similar jurisdiction.

29. Exercise by Subordinate Judge of jurisdiction of District Judge in certain proceedings.

30. Vacation.

SCHEDULE.—[*Repealed.*]

(Part I.—Preliminary. Part II.—Establishment and Constitution of Civil Courts.)

ACT No. III OF 1873.[1]

[*21st January, 1873.*]

An Act to consolidate and amend the Law relating to the Civil Courts of the Madras Presidency subordinate to the High Court.

Preamble.

WHEREAS it is expedient to consolidate and amend the law relating to the Civil Courts of the Madras Presidency subordinate to the High Court; It is hereby enacted as follows:—

PART I.

PRELIMINARY.

Short title.

1. This Act may be called the Madras Civil Courts Act, 1873.

Local extent.

It extends to all the territories [2]* * * * under the Government of the Governor of Fort St. George in Council, except the tracts respectively under the jurisdiction of the Agents for Ganjam and Vizagapatam;

Commencement.

and it shall come into force on the first day of March 1873.

2. [*Repeal of certain enactments*] *Rep. by the Repealing Act, 1873 (XII of 1873).*

PART II.

ESTABLISHMENT AND CONSTITUTION OF CIVIL COURTS.

Number of District Courts.

3. The number of District (heretofore designated Zila) Courts to be established or continued under this Act, shall be fixed, and may from time to time be altered, by the [3][State Government].

[4] * * * * *

Appointment of Additional District Judges.

[5][**3A.** When in the opinion of the High Court, the state of business pending before the Judge of any District Court (hereinafter called the 'District Judge') so requires, the [3][State Government] may appoint one or more Additional District Judges to that Court for such period as they may deem necessary.

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[1] For Statement of Objects and Reasons, *see* Gazette of India, 1873, Pt. V, p. 173; for report of the Select Committee, *see ibid.*, 1872, Pt. V, p. 695; for Proceedings in Council relating to the Bill, *see ibid.*, Supplement, 1870, p. 900, and 1873, pp. 3, 16 and 153.

This Act ceased to have effect in the areas transferred to Orissa from the Madras Presidency: *see* the Orissa Laws Regulation, 1936 (1 of 1936), s. 4.

[2] The words "for the time being" rep. by the A. O. 1937.

[3] Subs. by the A. O. 1950 for "Provincial Government" which had been subs. by the A. O. 1937 for "L. G."

[4] The words "Provided that no increase to the number of such Courts shall be made by such Govt. without the previous sanction of the G. G. in C." rep. by the Decentralization Act, 1914 (4 of 1914), s. 2 and Sch., Pt. I.

[5] Ins. by the Madras Civil Courts (Amendment) Act, 1931 (Mad. 2 of 1931) s. 2.

(Part II.—Establishment and Constitution of Civil Courts.)

The Additional District Judges so appointed shall discharge all or any of the functions of the District Judge under this Act or any other law for the time being in force which the District Judge may assign to them, and, in the discharge of those functions, they shall exercise the same powers as the District Judge.]

Number of Subordinate Judges and District Munsifs.

4. The number of Subordinate Judges and District Munsifs to be appointed under this Act for each district, shall be fixed, and may from time to time be altered by the [1][State Government].

[2]* * * * *

[3][The [1][State Government] may, after consultation with the High Court, fix and from time to time vary by notification the number of Subordinate Judges to be appointed for a Subordinate Judge's Court or the number of District Munsifs to be appointed for a District Munsif's Court.]

Appointment of Additional Subordinate Judges and Additional District Munsifs.

[4][**4-A.** When more than one Subordinate Judge is appointed to a Subordinate Judge's Court or more than one District Munsif to a District Munsif's Court, one of the Subordinate Judges or the District Munsifs shall be appointed the Principal Subordinate Judge or Principal District Munsif and the others Additional Subordinate Judges or Additional District Munsifs as the case may be.

Each of the Judges appointed to a Subordinate Judge's Court or a District Munsif's Court may exercise all or any of the powers conferred on the Court by this Act or any other law for the time being in force.

Subject to the general or special orders of the district Judge, the Principal Subordinate Judge or the Principal District Munsif may, from time to time, make such arrangements as he thinks fit for the distribution of the business of the Court among the various Judges thereof.]

Court's locality.

5. The place at which any Court under this Act shall be held may be fixed, and may from time to time be altered,

in the case of a District Court or a Subordinate Judge's Court, by the [1][State Government],

in the case of a District Munsif's Court, by the High Court.

[5][The places fixed for any Court under this section shall be deemed to be within the local jurisdiction of that Court.]

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[1] Subs. by the A. O. 1950 for "Provincial Government" which had been subs. by the A. O. 1937 for "L. G.".

[2] The words "Provided that no addition to the number of such officers shall be made by such Govt. without the previous sanction of the G. G. in C." rep. by the Decentralization Act, 1914 (4 of 1914), s. 2 and Sch., Pt. I.

[3] Ins. by the Madras Civil Courts (Amendment) Act, 1925 (Mad. 3 of 1925), s. 2.

[4] Ins. by s 3 *ibid.*

[5] Ins. by the Madras Civil Courts Act, 1885 (21 of 1885), s. 2.

(Part II.—Establishment and Constitution of Civil Courts. Part III.—Jurisdiction.)

[1]**6.** [*Appointment to vacancy in office of District Judge or Subordinate Judge.*] *Rep. by the A. O. 1937.*

[1]**7.** [*Appointment to vacancy in office of District Munsif. Publication of appointments. Annulment of appointments.*] *Rep. by the A. O. 1937.*

District Courts, Subordinate Judges and District Munsifs.

8. The present Zila Courts, Principal Sadar Amins, and District Munsifs, shall be respectively the first "District Courts," "Subordinate Judges," and "District Munsifs" under this Act.

Seal of Court.

9. Every Court under this Act shall use a seal of such form and dimensions as are, for the time being, prescribed by the [2][State Government].

PART III.

JURISDICTION

Local limits of jurisdiction of District Court or Subordinate Judge.

10. The [2][State Government] shall fix, and may from time to time vary, the local limits of the jurisdiction of any [3][District Court or Subordinate Judge's Court] under this Act.

[4]* * * *

The present local limits of the jurisdiction of every Civil Court (other than the High Court) shall be deemed to have been fixed under this Act.

Local jurisdiction of District Munsifs.

11. The High Court shall fix, and may from time to time modify, the local jurisdiction of District Munsifs.

[5]* * * * *

Jurisdiction of District Judge or Subordinate Judge in original suits.

12. The jurisdiction of a District Judge or a Subordinate Judge extends, subject to the rules contained in the [6]Code of Civil Procedure, to all original suits and proceedings of a civil nature.

Jurisdiction of District Munsif.

The jurisdiction of a District Munsif extends to all like suits and proceedings, not otherwise exempted from his cognizance, of which the amount or value of the subject-matter does not exceed [7][three thousand] rupees.

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1 *See* now the Govt of India Act, 1935, s. 254.

2 Subs. by the A. O. 1950 for "Provincial Government" which had been subs. by the A. O. 1937 for "L. G."

3 Subs. by the Madras Civil Courts (Amendment) Act, 1925 (Mad 3 of 1925), s. 4, for "District Judge or Subordinate Judge."

4 The proviso rep. by s. 4, *ibid.*

5 The second paragraph of s. 11 which had been added by the Madras Civil Courts Act, 1885 (21 of 1885), s. 3, was rep. by the Madras Civil Courts (Amendment) Act, 1925 (Mad. 3 of 1925) s. 5.

6 *See* now the Code of Civil Procedure, 1908 (5 of 1908).

7 Subs. by the Madras Civil Courts (Amendment) Act, 1916 (Mad. 3 of 1916), s. 2, for "two thousand five hundred".

(*Part III.—Jurisdiction.*)

13. Regular or special appeals [1]* * shall, when such appeals are allowed by law, lie from the decrees and orders of a District Court to the High Court.

Appeals from decrees of District Courts.

Appeals from the decrees and orders of Subordinate Judges and District Munsifs shall, when such appeals are allowed by law, lie to the District Court, except when the amount or value of the subject-matter of the suit exceeds rupees five thousand, in which case the appeal shall lie to the High Court:

Appellate jurisdiction of District Court.

'Provided that, whenever a Subordinate Judge's Court is established in any district at a place remote from the station of the District Court, the High Court may, with the previous sanction of the [2][State Government], direct that appeals from the decrees or orders of District Munsifs within the local limits of the jurisdiction of such Subordinate Judge be preferred in the Court of the latter.

Appellate jurisdiction of Subordinate Judge.

Provided also, that the District Judge may remove to his own Court, from time to time, appeals so preferred, and dispose of them himself, or may, subject to the orders of the High Court, refer any appeals from the decrees and orders of District Munsifs, preferred in the District Court, to any Subordinate Judge within the district.

Disposal of appeal by District Judge.

[3][Provided further that when the district Court or the Subordinate Judge's Court to which appeals lie is adjourned under section 30, the High Court shall have power to receive such appeals.]

[4]**14.** When the subject-matter of any suit or proceeding is land, a house or a garden, its value shall, for the purposes of the jurisdiction conferred by this Act, be fixed in manner provided by the Court Fees Act, 1870, section 7, clause v.

Valuation of suits for immovable property.

VII of 1870

15. Every Court under this Act may require a witness or party to any suit or other proceeding pending in such Court to make such oath or affirmation as is prescribed by the law for the time being in force.

Power to require witness or party to make oath or affirmation.

[5]**16.** Where, in any suit or proceeding, it is necessary for any Court under this Act to decide any question regarding succession, inheritance, marriage, or caste, or any religious usage or institution,

Law administered by Courts to Natives.

(*a*) the Muhammadan law in cases where the parties are Muham-

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[1] The words "or appeals under Madras Regulation 11 of 1832, s. 9", rep. by the Amending Act, 1891 (12 of 1891).

[2] Subs. by the A. O. 1950 for "Provincial Government" which had been subs. by the A. O. 1937 for "L. G."

[3] Ins. by the Madras Civil Courts (Amendment) Act 1945 (Mad 22 of 1945), s. 2.

[4] This section has been rep. in local areas to which rules under s. 3 of the Suits Valuation Act, 1887 (7 of 1887) apply; see s 6 of that Act.

[5] The provisions of this section have been repealed in so far as they are inconsistent with the provisions of the Muslim Personal Law (*Shariat*) Application Act, 1937 (26 of 1937); see s. 6 of that Act

(Part III.—Jurisdiction Part IV.—Misconduct of Judges. Part V.—Ministerial Officers.)

madans and the Hindu law in cases where the parties are Hindus, or,

(*b*) any custom (if such there be) having the force of law and governing the parties or property concerned,

shall form the rule of decision, unless such law or custom has, by legislative enactment, been altered or abolished

(*c*) In cases where no specific rule exists, the Court shall act according to justice, equity, and good conscience.

Judges not to try suits in which they are interested:

17. No District Judge, Subordinate Judge or District Munsif shall try any suit to or in which he is a party or personally interested, or shall adjudicate upon any proceeding connected with, or arising out of, such suit.

not to try appeals from decrees passed by them in other capacities.

No District Judge or Subordinate Judge shall try any appeal against a decree or order passed by himself in another capacity.

Mode of disposing of such suits and appeals.

When any such suit, proceeding or appeal comes before any such officer, he shall report the circumstances to the Court to which he is immediately subordinate.

The superior Court shall thereupon dispose of the case in the manner prescribed by the [1]Code of Civil Procedure, section 6.

Nothing in the last preceding clause of this section shall be deemed to affect the extraordinary original civil jurisdiction of the High Court.

PART IV

[*Misconduct of Judges*] *Rep by the A. O 1937.*

PART V

Ministerial Officers

[2]**22.** [*Appointment, suspension or removal of Ministerial Officers of District Courts.*] *Rep. by the A O 1937*

[2]**23.** [*Appointment, etc., of Ministerial Officers of Subordinate Courts.*] *Rep. by the A. O. 1937.*

Duties of Ministerial Officers.

[3][**24.** The Ministerial Officers of a Court shall perform such duties as may from time to time be imposed upon them by the presiding officer of the Court.]

[1] *See* now the Code of Civil Procedure, 1908 (Act 5 of 1908), s. 24.

[2] The appointment, suspension, removal and transfer of ministerial officers of Civil Courts are now regulated under s. 241 of the G. of I. Act, 1935.

[3] Subs. by the A O. 1937 for the original section

PART VI.

MISCELLANEOUS.

Appointment of Subordinate Judge for two or more districts.

[1]**[24-A.** (1) Notwithstanding anything contained in this Act, a subordinate Judge may, where the [2][State] Government so direct, be appointed for the area comprised within the local limits of the jurisdiction of two or more District Courts.

(2) A Subordinate Judge so appointed shall hold his Court at such place within the jurisdiction of each of the said District Courts and for such period as the High Court may from time to time fix.

(3) The local limits of the jurisdiction of the Subordinate Judge's Court, when it is held at any such place, shall be the same as those of the District Court concerned, but the Subordinate Judge's Court shall not entertain any original suit or proceeding and shall try or dispose of only such suits, appeals and other proceedings as may be transferred to it by the District Court under this Act or any other law.

(4) Appeals from the decrees and orders of the Subordinate Judge in suits or proceedings so transferred shall, where they lie to a District Court, lie to the District Court which transferred the suits or proceedings.]

Temporary discharge of duties of District Judge.

25. In the event of the death of the District Judge,

or of his being incapacitated by illness or otherwise for the performance of his duties,

or of his absence from the station in which his Court is held,

[3][the Senior Additional District Judge or the Additional Disitrict Judge as the case may be or if there is no Additional District Judge], the senior Subordinate Judge of the District shall, without interruption to his ordinary duties, assume charge of the District Judge's office, and shall discharge such of the current duties thereof as are connected with the filing of suits and appeals, the execution of processes and the like,

and shall continue in charge of the office until the same is resumed or assumed by an officer duly appointed thereto.

26. [*District Judge may nominate to vacancy in office of District Munsif.*] *Rep. by the A. O. 1937.*

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[1] S. 24A was ins. by the Madras Civil Courts (Amendment) Act, 1948 (Mad. 10 of 1948), s. 2. The former s. 24A: "Transfer of Ministerial officers": occuring in Pt. V, had been rep. by the A. O. 1937.

[2] Subs. by the A. O. 1950 for "Provincial".

[3] Ins. by the Madras Civil Courts (Amendment) Act, 1931 (Mad. 2 of 1931), s. 6.

[4] Subs. by the Decentralization Act, 1914 (4 of 1914), s. 2 and Sch., Pt. I, for "L. G."

District Judge to control Civil Courts of District.

27. Subject to the other provisions of this Act and to the rules for the time being in force and prescribed by the High Court in this behalf, the general control over all the Civil Courts under this Act in any district is vested in the District Judge.

Investiture of Subordinate Judge with Small Cause jurisdiction

28. The [1][High Court] may, by notification in the official Gazette, invest within such local limits as it shall from time to time appoint,

any [2][District or] Subordinate Judge with the jurisdiction of a Judge of a Court of Small Causes for the trial of suits cognizable by such Courts up to the amount of rupees [3][one thousand],

Investiture of District Munsif with similar jurisdiction.

and any District Munsif with the same jurisdiction up to the amount of [4]* * * * * rupees [5][three hundred],

and may, by like notification, whenever it thinks fit, withdraw such jurisdiction from the [6][District or] Subordinate Judge or Munsif so invested.

Exercise by Subordinate Judge of jurisdiction of District Judge in certain proceedings.

[7][**29.** (1) The High Court may, by general or special order, authorize any Subordinate Judge to take cognizance of, or any District Judge to transfer to any Subordinate Judge under his control, any proceedings under the Indian Succession Act, 1925, which cannot be disposed of by District Delegates.

(2) The District Judge may withdraw any such proceedings taken cognizance of by, or transferred to, a Subordinate Judge, and may either himself dispose of them or transfer them to a Court under his control competent to dispose of them.

(3) Notwithstanding anything contained in section 13, proceedings taken cognizance of by, or transferred to, a Subordinate Judge under the provisions of this section shall be disposed of by him subject to the law applicable to like proceedings when disposed of by District Judge.]

Vacation.

30. The High Court may permit the Civil Courts under its control to adjourn from time to time for periods not exceeding in the aggregate two months in each year.

SCHEDULE.—[Enactments repealed.] Repealed by the Repealing Act, 1873 (XII of 1873).

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[1] Subs. by the Decentralization Act, 1914 (4 of 1914), s. 2 and Sch., Pt. I, for "L. G.".

[2] Ins. by the Madras Civil Courts Act 1885 (21 of 1885), s. 5.

[3] Subs. by the Madras Civil Courts (Second Amendment) Act, 1926 (18 of 1926), s. 2, for "five hundred."

[4] The words "rupees fifty or on the recommendation of the High Court up to any amount not exceeding" rep. by the Decentralization Act, 1914 (4 of 1914), s. 2 and Sch., Pt. I.

[5] Subs. by the Madras Civil Courts (Second Amendment) Act, 1926 (18 of 1926), s. 2, for "two hundred."

[6] Ins by the Madras Civil Courts Act, 1885 (21 of 1885), s. 5.

[7] Ins. by the Madras Civil Courts (Amendment) Act 1926 (14 of 1926), s. 2

(*Preliminary.*)

THE GOVERNMENT SAVINGS BANKS ACT, 1873.

ACT No. V OF 1873.[1]

[*28th January, 1873.*]

An Act to amend the law relating to Government Savings Banks.

WHEREAS it is expedient to amend the law relating to the payment of deposits in Government Savings Banks ; It is hereby enacted as follows :— **Preamble.**

Preliminary.

1. This Act may be called the Government Savings Banks Act, 1873 **Short title.**

It extends to [2][the whole of India] ~~except Part B States~~. **Local extent.**

[3] ~~Sections 82~~ . * * *

2. [*Repeal of Act XXVI of 1855.*] *Rep. by the Repealing Act, 1873 (XII of 1873).*

3. In this Act— **Interpretation-clause.**

"depositor" means a person by whom, or on whose behalf, money has been heretofore, or shall be hereafter, deposited in a Government Savings Bank; and "deposit" means money so deposited:

[4]["Secretary" means, in the case of a Post Office Savings Bank, the Postmaster-General appointed for the area in which the Savings Bank is situate], [5][or if that area is in Pakistan, by the Postmaster-General for such area in India as the Central Government may by general or special order specify in this behalf]:

IX of 1875. [6]["minor" means a person who is not deemed to have attained his majority under the Indian Majority Act, 1875.]

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[1] For the Statement of Objects and Reasons to the Bill, which was based upon the Trustee Savings Banks Act, 1863 (26 and 27 Vict., c. 87), s. 30, *see* Gazette of India, 1872, Pt. V, p. 575; for Proceedings in Council, *see ibid*, 1872, Supplement, pp. 727, 743; *ibid.*, 1873, Supplement, pp. 150 and 221.

This Act has been extended to Berar by the Berar Laws Act, 1941 (4 of 1941) and has been declared to be in force in the Sonthal Parganas by the Sonthal Parganas Settlement Regulation (3 of 1872), s. 3; in the Khondmals District by the Khondmals Laws Regulation, 1936 (4 of 1936), s. 3 and Sch.; and in the Angul District by the Angul Laws Regulation, 1936 (5 of 1936), s. 3 and Sch.

It has been declared, by notification under s. 3 (*a*) of the Scheduled Districts Act, 1874 (14 of 1874), to be in force in the following Scheduled Districts, namely:—the Districts of Hazaribagh, Lohardaga, and Manbhum, and Pargana Dhalbhum and the Kolhan in the District of Singbhum, *see* Gazette of India, 1881, Pt. I, p. 504. The District of Lohardaga (now called the Ranchi District, *see* Calcutta Gazette, 1899, Pt. I p. 44) included at this time the District of Palamau, separated in 1894.

It has been applied, with retrospective effect, to Porahat Estate in the District of Singbhum by Bihar Reg. 1 of 1945.

[2] Subs. by the A. O. 1950 for "the whole of British India" which had been subs. by the A. O. 1948 for "the whole of British India".

[3] The commencement cl. rep. by the Repealing Act, 1874 (16 of 1874).

[4] Subs. by the Government Savings Banks (Amendment) Act, 1923 (16 of 1923), s. 2, for the original definition.

[5] Ins. by the A. O. 1948.

[6] Subs. by the Amending Act, 1916 (13 of 1916), s. 2 and Sch., for the original definition.

(Deposits belonging to the Estates of deceased Persons.)

Deposits belonging to the Estates of deceased Persons.

Payment on death of depositor

[1][4. If a depositor dies and probate of his will or letters of administration of his estate or a succession certificate granted under the Indian Succession Act, 1925, is not within three months of the death of the depositor produced to the Secretary of the Government Savings Bank in which the deposit is, then— XXXIX of 1925.

(*a*) if the deposit does not exceed five thousand rupees, the Secretary may pay the same to any person appearing to him to be entitled to receive it or to administer the estate of the deceased, and

(*b*) within the aforesaid limit of five thousand rupees, any officer employed in the management of a Government Savings Bank who is empowered in this behalf by a general or special order of the Central Government may, to the extent to which he is empowered by such order and subject to any general or special orders of the Secretary in this behalf, pay the deposit to any person appearing to him to be entitled to receive it or to administer the estate]

Payment to be a discharge. Saving of right of executor.

5. Such payment shall be a full discharge from all further liability in respect of the money so paid:

But nothing herein contained precludes any executor or administrator, or other representative of the deceased, from recovering from the person receiving the same the amount remaining in his hands after deducting the amount of all debts or other demands lawfully paid or discharged by him in due course of administration

Saving of right of creditor.

And any creditor or claimant against the estate of the deceased may recover his debt or claim out of the money paid under this Act or [2]* * Act No. XXVI of 1855,[3] to any person, and remaining in his hands unadministered, in the same manner and to the same extent as if the latter had obtained letters of administration of the estate of the deceased.

Security for due administration.

6. The Secretary of any such Bank [4][or any officer empowered under section 4] may take such security as he thinks necessary from any person to whom he pays any money under section 4 for the due administration of the money so paid

and he may assign the said security to any person interested in such administration.

[1] Subs. by the Government Savings Banks (Amendment) Act, 1943 (2 of 1943), s. 2, for the former section which had been subs. by the Government Savings Banks (Amendment) Act, 1923 (16 of 1923), s. 3, for the original section.

[2] The words "the said" rep. by the Amending Act, 1891 (12 of 1891), s. 2 and Sch. I.

[3] Rep. by s. 2 of this Act.

[4] Ins. by Act 16 of 1923, s. 4.

(Deposits belonging to the Estates of deceased Persons Deposits belonging to Minors)

7. For the purpose of ascertaining the right of the person claiming to be entitled as aforesaid, the Secretary of any such Bank [1][or any officer empowered under section 4] may take evidence on oath or affirmation according to the law[2] for the time being relating to oaths and affirmations.

Power to administer oath.

Any person who, upon such oath or affirmation, makes any statement which is false, and which he either knows or believes to be false or does not believe to be true, shall be deemed guilty of an offence under section 193 of the Indian Penal Code

Penalty for false statements.

XLV of 1860.

8. Where the amount of the deposit belonging to the estate of a deceased depositor does not exceed [3][three thousand rupees,] such amount shall be excluded in computing the fee chargeable, under the Court-fees Act, 1870, on the probate, or letters of administration, or certificate (if any), granted in respect of his property[4]:

Deposit when excluded in computing court-fees.

VII of 1870.

Provided that the person claiming such probate or letters or certificate shall exhibit to the Court authorized to grant the same a certificate of the amount of the deposit in any Government Savings Bank belonging to the estate of the deceased Such certificate shall be signed by the Secretary of such Bank, and the Court shall receive it as evidence of the said amount.

9. Nothing hereinbefore contained applies to money belonging to the estate of any European officer, non commissioned officer or soldier dying in Her Majesty's service in India, or of any European who, at the time of his death, was a deserter from the said service

Act not to apply to deposits belonging to estates of European soldiers or deserters.

Deposits belonging to Minors

10. Any deposit made by, or on behalf of, any minor may be paid to him personally if he made the deposit, or to his guardian for his use if the deposit was made by any person other than the minor, together with the interest accrued thereon

Payment of deposits to minor or guardian.

The receipt of any minor or guardian for money paid to him under this section shall be a sufficient discharge therefor.

11. All payments of deposits heretofore made to minors or their guardians by any Secretary of a Government Savings Bank shall be deemed to have been made in accordance with law.

Legalization of like payments heretofore made.

[1] Ins. by the Government Savings Bank (Amendment) Act 1923 (15 of 1923) s. 4.

[2] See the Indian Oaths Act, 1873 (10 of 1873).

[3] Subs. by the Government Savings Banks (Amendment) Act, 1917 (17 of 1917), s. 2, for "one thousand rupees".

[4] *Cf.* the Savings Bank Act, 1828 (9 Geo 4, c 92), s. 40 now rep. by the Savings Banks Act, 1863 (26 and 27 Vict., c. 87).

(Deposits belonging to Lunatics. Deposits made by Married Women. Rules.)

Deposits belonging to Lunatics.

Payment of deposits belonging to lunatics.

12. If any depositor becomes insane or otherwise incapable of managing his affairs

and if such insanity or incapacity is proved to the satisfaction of the Secretary of the Bank in which his deposit may be,

such Secretary may, from time to time, make payments out of the deposit to any proper person,

and the receipt of such person, for money paid under his section, shall be a sufficient discharge therefor.

Where a committee or manager of the depositor's estate has been duly appointed, nothing in this section authorizes payments to any person other than such committee or manager.

Deposits made by Married Women.

Payment of married women's deposits.

13. Any deposit made by or on behalf of a married woman, or by or on behalf of a woman who afterwards marries, may be paid to her, whether or not the Indian Succession Act, 1865[1] section 4, applies to her marriage; and her receipt for money paid to her under this section shall be a sufficient discharge therefor X of 1865

Rules.

Rules regulating certificates under section 8, and payments under section 10, 12 or 13

14. All certificates under section 8, and all payments under section 10 section 12 or section 13, shall be respectively granted and made by the Secretary of the Bank, subject to such rules consistent with this Act as the [2][Central Government] may, from time to time, prescribe.

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[1] See now the Indian Succession Act 1925 (39 of 1925).

[2] Subs. by the A. O. 1937 for "G. G. in C."

THE NORTHERN INDIA CANAL AND DRAINAGE ACT, 1873.

CONTENTS

PART I

PREAMBLE.

PRELIMINARY.

SECTIONS.

1. Short title.
   Local extent.
2. [*Repealed*]
3. Interpretation-clause
4. Power to appoint officers

PART II.

OF THE APPLICATION OF WATER FOR PUBLIC PURPOSES

5. Notification to issue when water-supply is to be applied for public purposes.
6. Powers of Canal-officer.
7. Notice as to claims for compensation.
8. Damage for which compensation shall not be awarded; matters in respect of which compensation may be awarded.
9. Limitation of claims.
10. Enquiry into claims and amount of compensation.
11. Abatement of rent on interruption of water-supply.
12. Enhancement of rent on restoration of water-supply.
13. Compensation when due.
    Interest.

PART III.

OF THE CONSTRUCTION AND MAINTENANCE OF WORKS

14. Power to enter and survey, etc
    Power to clear land
    Power to inspect and regulate water supply.
    Notice of intended entry into houses.
    Compensation for damage caused by entry

SECTIONS.

15. Power to enter for repairs and to prevent accidents.
Compensation for damage to land.
16. Application by persons desiring to use canal-water.
Contents of application.
Liability of applicants for cost of works.
Recovery of amount due.
17. Government to provide means of crossing canals.
18. Persons using water-course to construct works for passing water across roads, etc.
If they fail, Canal-officer may construct, and recover cost.
19. Adjustment of claims between persons jointly using water-course.
Recovery of amount found due.
20. Supply of water through intervening water-course.
21. Application for construction of new water-course.
22. Procedure of Canal-officer thereupon.
23. Application for transfer of existing water-course.
Procedure thereupon.
24. Objections to construction or transfer applied for.
25. When applicant may be placed in occupation.
26. Procedure when objection is held valid.
27. Procedure when Canal-officer disagrees with Collector.
28. Expenses to be paid by applicant before receiving occupation.
Procedure in fixing compensation.
Recovery of compensation and expenses.
29. Conditions binding on applicant placed in occupation.
30. Procedure applicable to occupation for extensions and alterations.

PART IV.

OF THE SUPPLY OF WATER

31. In absence of written contract, water-supply to be subject to rules.
32. Conditions as to—
power to stop water-supply;
claims to compensation in case of failure or stoppage of supply;
claims on account of interruption from other causes;
duration of supply;

SECTIONS.

sale or sub-letting of right to use canal-water·
transfer, with land, of contracts for water.
No right acquired by user.

PART V.

OF WATER-RATES.

33. Liability when person using unauthorisedly cannot be identified.
34. Liability when water runs to waste.
35. Charges recoverable in addition to penalties.
Decision of questions under section 33 and 34.
36. Charge on occupier for water, how determined.
"Occupier's rate."
37. "Owner's rate."
38. Amount of owner's rate.
39. Owner's rate when not chargeable.
40. When occupier is to pay both owner's rate and occupier's rate.
41. Power to make rules for apportioning owner's rate.
42. When owner is to pay owner's rate.
43. Effect of introduction of canal irrigation on landlord's right to enhance.
44. Water-rate by whom payable, when charged on land held by several owners.

RECOVERY OF CHARGES

45. Certified dues recoverable as land-revenue.
46. Power to contract for collection of canal-dues.
47. Lambardars may be required to collect canal-dues.
48. Fines excluded from sections 45, 46, 47.

PART VI.

OF CANAL-NAVIGATION

49. Detainer of vessels violating rules.
Liability of owners of vessels causing damage.
50. Recovery of fines for offences in navigating canals.
51. Power to seize and detain vessel on failure to pay charges.
52. Power to seize cargo or goods if charges due thereon are not paid.
53. Procedure for recovery of such charges after seizure.
54. Procedure in respect of vessels abandoned and goods unclaimed.
Disposal of proceeds of sale.

PART VII.

Of Drainage

SECTIONS.

55 Power to prohibit obstructions or order their removal.
56. Power to remove obstructions after prohibition.
57. Preparation of schemes for works of improvement.
58. Powers of persons employed on such schemes.
59. Rate on lands benefitted by works.
60. Recovery of rate.
61 Disposal of claims to compensation.
62. Limitation of such claims.

PART VIII.

Of obtaining Labour for Canals and Drainage-works

63. Definition of "labourer."
64 Power to prescribe number of labourers to be supplied by persons benefitted by canal.
65. Procedure of obtaining labour for works urgently required
66 Liability of labourers under requisition

PART IX

Of Jurisdiction

67. Jurisdiction under this Act of Civil Courts.
68. Settlement of differences as to mutual rights and liabilities of persons interested in water-course.
69. Power to summon and examine witnesses.

PART X.

Of Offences and Penalties.

70. Offences under Act.
Penalty.
71. Saving of prosecution under other laws.
72. Compensation to person injured.
73. Power to arrest without warrant
74. Definition of "canal".

PART XI.

OF SUBSIDIARY RULES

SECTIONS.

75. Power to make, alter and cancel rules
Publication of rules

SCHEDULE.—[*Repealed.*]

ACT No. VIII OF 1873.[1]

[*11th February, 1873.*]

An Act to regulate Irrigation, Navigation and Drainage in Northern India. **Preamble**

Whereas, throughout the territories to which this Act extends, [2][the Provincial Government] is entitled to use and control for public purposes the water of all rivers and streams flowing in natural channels, and of all lakes and other natural collections of still water; and whereas it is expedient to amend the law relating to irrigation, navigation and drainage in the said territories; it is hereby enacted as follows:—

PART I

PRELIMINARY

1. This Act may be called the Northern India Canal and Drainage Act, 1873. **Short title.**

It extends to the [3][Uttar Pradesh and the States of Punjab and Delhi] and applies to all lands, whether permanently settled, temporarily settled, or free from revenue. **Local extent**

[4]* * * * *

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[1] For Statement of Objects and Reasons, *see* Gazette of India, 1872, Pt. V, p. 651; for Reports of Select Committee, *see ibid.*, p. 747 and *ibid.*, Supplement, 1873, p. 223; for Proceedings in Council, *see ibid.*, Supplement, pp. 919, 956 and 1081; *ibid.*, 1873, Supplement, pp. 54, 156, 223, 246 and 279.

[2] Subs. by the A. O. 1937 for "the Govt.".

[3] Subs. by the A. O. 1950 for the original words as amended by the A. O. 1937 and the A. O. 1948. The Act originally extended to the territories which are now the U.P., the Punjab, and the C.P. It has been rep. in the C.P. by the C.P. Irrigation Act, 1931 (C.P. 3 of 1931). It has been declared not to apply to any canal which is included for the time being under Sch. I or Sch. II to the Punjab Minor Canals Act, 1905 (Punjab 3 of 1905), *see* s. 2 (*3*) of that Act.

[4] The commencement cl. rep by the Repealing Act, 1874 (16 of 1874)

2. [*Repeal of Acts.*] *Rep. by the Repealing Act, 1873 (XII of 1873), s. 1 and Sch., Pt. II.*

Interpretation clause.

3. In this Act, unless there be something repugnant in the subject or context:—

"Canal."

(*1*) "canal" includes—

(*a*) all canals, channels and reservoirs constructed, maintained or controlled by [1][the State Government] for the supply or storage of water;

(*b*) all works, embankments, structures, supply and escape channels connected with such canals, channels or reservoirs;

(*c*) all water-courses as defined in the second clause of this section;

(*d*) all parts of a river, stream, lake or natural collection of water or natural drainage-channel, to which the [2][State Government] has applied the provisions of Part II of this Act:

"Water-course."

(*2*) "water-course" means any channel which is supplied with water from a canal, but which is not maintained at the cost of [1][the State Government], and all subsidiary works belonging to any such channel:

"Drainage-work."

(*3*) "drainage--work" includes escape-channels from a canal, dams, weirs, embankments, sluices, groins and other works for the protection of lands from flood or from erosion, formed or maintained by [3][the State Government] under the provisions of Part VII of this Act, but does not include works for the removal of sewage from towns:

"Vessel."

[4](*4*) "vessel" includes boats, rafts, timber and other floating bodies:

"Commissioner."

(*5*) "Commissioner" means a Commissioner of a division, and includes any officer appointed under this Act to exercise all or any of the powers of a Commissioner:

"Collector."

[5](*6*) "Collector" means the head revenue-officer of a district and includes a Deputy Commissioner or other officer appointed under this Act to exercise all or any of the powers of a Collector:

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[1] Subs. by the A. O. 1950 for "the Provincial Government" which had been subs. by the A. O. 1937 for "Govt.".

[2] Subs. by the A. O. 1950 for "Provincial Government" which has been subs. by the A. O. 1937 for "L. G.".

[3] Subs. by the A. O. 1950 for "Provincial Government" which had been subs. by the A. O. 1937 for "the Govt.".

[4] *Cf.* definition in the General Clauses Act, 1897 (10 of 1897), s. 3 (56).

[5] *Cf.* definition in the General Clauses Act, 1897 (10 of 1897), s. 3 (10).

(*7*) "Canal-officer" means an officer appointed under this Act to exercise control or jurisdiction over a canal or any part thereof: "Canal-officer."

"Superintending Canal-officer" means an officer exercising general control over a canal or portion of a canal: "Superintending Canal-officer."

'Divisional Canal-officer" means an officer exercising control over a division of a canal: "Divisional Canal-officer."

"Sub-Divisional Canal-officer" means an officer exercising control over a sub-division of a canal: "Sub-divisional Canal officer."

(*8*) "district" means a district as fixed for revenue-purposes "District."

4. The [1][State Government] may from time to time declare, by notification in the Official Gazette, the officers by whom, and the local limits within which, all or any of the powers or duties hereinafter conferred or imposed shall be exercised or performed **Power to appoint officers**

All officers mentioned in section 3, clause (*7*), shall be respectively subject to the orders of such officers as the [1][State Government] from time to time directs

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PART II

Of the Application of Water for Public Purposes.

5. Whenever it appears expedient to the [1][State Government] that the water of any river or stream flowing in a natural channel, or of any lake or other natural collection of still water, should be applied or used by [2][the State Government] for the purpose of any existing or projected canal or drainage-work, the [1][State Government] may, by notification in the Official Gazette, declare that the said water will be so applied or used after a day to be named in the said notification, not being earlier than three months from the date thereof. **Notification to issue when water supply is to be applied for public purposes.**

6. At any time after the day so named, any Canal-officer, acting under the orders of the [1][State Government] in this behalf, may enter on any land and remove any obstructions, and may close any channels, and do any other thing necessary for such application or use of the said water **Powers of Canal officer.**

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[1] Subs. by the A. O. 1950 for "Provincial Government" which had been subs. by the A. O 1937 for "L. G.".

[2] Subs. by the A. O. 1950 for "the Provincial Government" which had been subs. by the A. O. 1937 for "the Govt."

(*Part II.—Of the Application of Water for Public Purposes.*)

Notice as to claims for compensation.

7. As soon as is practicable after the issue of such notification, the Collector shall cause public notice to be given at convenient places, stating that[1] [State Government] intends to apply or use the said water as aforesaid, and that claims for compensation in respect of the matters mentioned in section 8 may be made before him.

Damage for which compensation shall not be awarded.

8. No compensation shall be awarded for any damage caused by—

(*a*) stoppage or diminution of percolation or floods;

(*b*) deterioration of climate or soil;

(*c*) stoppage of navigation, or of the means of drifting timber or watering cattle;

(*d*) displacement of labour

Matters in respect of which compensation may be awarded.

But compensation may be awarded in respect of any of the following matters:—

(*e*) stoppage or diminution of supply of water through any natural channel to any defined artificial channel, whether above or under ground, in use at the date of the said notification;

(*f*) stoppage or diminution of supply of water to any work erected for purposes of profit on any channel, whether natural or artificial, in use at the date of the said notification;

(*g*) stoppage or diminution of supply of water through any natural channel which has been used for purposes of irrigation within the five years next before the date of the said notification;

(*h*) damage done in respect of any right to a water-course or the use of any water to which any person is entitled under the [2]Indian Limitation Act, 1877, Part IV; XV of 1877.

(*i*) any other substantial damage, not falling under any of the above clauses (*a*), (*b*), (*c*) or (*d*), and caused by the exercise of the powers conferred by this Act, which is capable of being ascertained and estimated at the time of awarding such compensation

In determining the amount of such compensation, regard shall be had to the diminution in the market-value, at the time of awarding compensation of the property in respect of which compensation is claimed; and, where such market-value is not ascertainable, the amount shall be reckoned at twelve times the amount of the diminution of the annual nett profits of such property caused by the exercise of the powers conferred by this Act.

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[1] Subs. by the A. O. 1950 for "the Provincial Govt." which had been subs. by the A. O. 1937 for "the Govt.".

[2] *See* now the Indian Limitation Act, 1908 (9 of 1908).

(Part II.—Of the Application of Water for Public Purposes.)

No right to any such supply of water as is referred to in clauses (*e*), (*f*) or (*g*) of this section, in respect of a work or channel not in use at the date of the notification, shall be acquired as against [1][the State Government], except by grant or under the [2]Indian Limitation Act, 1877, Part IV;

XV of 1877.

and no right to any of the advantages referred to in clauses (*a*), (*b*) and (*c*) of this section shall be acquired, as against [1][the State Government], under the same Part.

Limitation of claims.

9. No claim for compensation for any such stoppage, diminution or damage shall be made after the expiration of one year from such stoppage diminution or damage, unless the Collector is satisfied that the claimant had sufficient cause for not making the claim within such period.

Enquiry into claims and amount of compensation.

10. The Collector shall proceed to enquire into any such claim, and to determine the amount of compensation, if any, which should be given to the claimant; and sections 9 to 12 (inclusive), 14 and 15, 18 to 23 (inclusive), 26 to 40 (inclusive), 51, 57, 58 and 59 of the [3]Land Acquisition Act, 1870 shall apply to such inquiries :

X of 1870.

Provided that, instead of the last clause of the said section 26, the following shall be read :—"The provisions of this section and of section 8 of the Northern India Canal and Drainage Act, 1873, shall be read to every assessor in a language which he understands, before he gives his opinion as to the amount of compensation to be awarded."

VIII of 1873.

Abatement of rent on interruption of water-supply.

11. Every tenant holding under an unexpired lease, or having a right of occupancy, who is in occupation of any land at the time when any stoppage or diminution of water-supply, in respect of which compensation is allowed under section 8, takes place, may claim an abatement of the rent previously payable by him for the said land, on the ground that the interruption reduces the value of the holding.

Enhancement of rent on restoration of water-supply.

12. If a water-supply increasing the value of such holding is afterwards restored to the said land, the rent of the tenant may be enhanced in respect of the increased value of such land due to the restored water-supply, to an amount not exceeding that at which it stood immediately before the abatement.

Such enhancement shall be on account only of the restored water-supply, and shall not affect the liability of the tenant to enhancement of rent on any other grounds.

Compensation when due.

13. All sums of money payable for compensation under this Part

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[1] Subs. by the A. O. 1950 for "the Provincial Govt." which had been subs. by the A. O. 1937 for "the Govt.".

[2] *See* now the Indian Limitation Act, 1908 (9 of 1908).

[3] *See* now the Land Acquisition Act, 1894 (1 of 1894).

shall become due three months after the claim for such compensation is made in respect of the stoppage, diminution or damage complained of,

Interest.

and simple interest at the rate of six per cent. per annum shall be allowed on any such sum remaining unpaid after the said three months, except where the non-payment of such sum is caused by the wilful neglect or refusal of the claimant to receive the same.

PART III.

Of the Construction and Maintenance of Works

Power to enter and survey, etc.

14. Any Canal-officer, or other person acting under the general or special order of a Canal-officer;

may enter upon any lands adjacent to any canal, or through which any canal is proposed to be made, and undertake surveys or levels thereon;

and dig and bore into the sub-soil;

and make and set up suitable land-marks, level-marks and water-gauges;

and do all other acts necessary for the proper prosecution of any enquiry relating to any existing or projected canal under the charge of the said Canal-officer;

Power to clear land.

and, where otherwise such enquiry cannot be completed, such officer or other person may cut down and clear away any part of any standing crop, fence or jungle;

Power to inspect and regulate water-supply

and may also enter upon any land, building or watercourse on account of which any water-rate is chargeable, for the purpose of inspecting or regulating the use of the water supplied, or of measuring the lands irrigated thereby or chargeable with a water-rate, and of doing all things necessary for the proper regulation and management of such canal:

Notice of intended entry into houses.

Provided that, if such Canal-officer or person proposes to enter into any building or enclosed court or garden attached to a dwelling-house not supplied with water flowing from any canal, he shall previously give the occupier of such building, court or garden at least seven days' notice in writing of his intention to do so.

Compensation for damage

In every case of entry under this section, the Canal-officer shall, at the time of such entry, tender compensation for any damage which may

(Part III.—Of the Construction and Maintenance of Works.)

be occasioned by any proceeding under this section ; and, in case of dispute as to the sufficiency of the amount so tendered, he shall forthwith refer the same for decision by the Collector, and such decision shall be final.

caused by entry.

15. In case of any accident happening or being apprehended to a canal any Divisional Canal-officer or any person acting under his general or special orders in this behalf may enter upon any lands adjacent to such canal, and may execute all works which may be necessary for the purpose of repairing or preventing such accident.

Power to enter for repairs and to prevent accidents.

In every such case such Canal-officer or person shall tender compensation to the proprietors or occupiers of the said lands for all damage done to the same. If such tender is not accepted, the Canal-officer shall refer the matter to the Collector, who shall proceed to award compensation for the damage as though the [1][State Government] had directed the occupation of the lands under section 43 of the Land Acquisition Act, 1870.[2]

Compensation for damage to land.

X of 1870.

16. Any persons desiring to use the water of any canal may apply in writing to the Divisional or Sub-divisional Canal-officer of the division or sub-division of the canal from which the water-course is to be supplied, requesting such officer to construct or improve a water-course at the cost of the applicants.

Application by persons desiring to use canal-water.

The application shall state the works to be undertaken, their approximate estimated cost, or the amount which the applicants are willing to pay for the same, or whether they engage to pay the actual cost as settled by the Divisional Canal-officer, and how the payment is to be made.

Contents of application.

When the assent of the Superintending Canal-officer is given to such application, all the applicants shall, after the application has been duly attested before the Collector, be jointly and severally liable for the cost of such works to the extent mentioned therein.

Liability of applicants for cost of works.

Any amount becoming due under the terms of such application, and not paid to the Divisional Canal-officer, or the person authorised by him to receive the same, on or before the date on which it becomes due, shall, on the demand of such officer, be recoverable by the Collector as if it were an arrear of land-revenue.

Recovery of amount due.

17. There shall be provided, at the cost of [3][the State Government], suitable means of crossing canals constructed or maintained at the cost of [3][the State Government], at such places as the [1][State Government]

Government to provide means of

[1] Subs. by the A. O. 1950 for "Provincial Govt." which had been subs. by the A. O. 1937 for "L. G.".

[2] *See* now the Land Acquisition Act, 1894 (1 of 1894), sec. 35.

[3] Subs. by the A. O. 1950 for "the Provincial Govt." which had been subs. by the A. O 1937 for "the Govt.".

Crossing canals

thinks necessary for the reasonable convenience of the inhabitants of the adjacent lands.

On receiving a statement in writing, signed by not less than five of the owners of such lands, to the effect that suitable crossings have not been provided on any canal, the Collector shall cause enquiry to be made into the circumstances of the case, and if he thinks that the statement is established, he shall report his opinion thereon for the consideration of the [1][State Government], and the [1][State Government] shall cause such measures in reference thereto to be taken as it thinks proper.

Persons using water-course to construct works for passing water across roads etc.

18. The Divisional Canal-officer may issue an order to the persons using any water-course to construct suitable bridges, culverts or other works for the passage of the water of such water-course across any public road, canal or drainage-channel in use before the said water-course was made, or to repair any such works.

Such order shall specify a reasonable period within which such construction or repairs shall be completed;

If they fail, Canal-officer may construct,

and if, after the receipt of such order, the persons to whom it is addressed do not, within the said period, construct or repair such works to the satisfaction of the said Canal-officer, he may, with the previous approval of the Superintending Canal-officer, himself construct or repair the same;

and recover cost.

and if the said persons do not, when so required, pay the cost of such construction or repairs as declared by the Divisional Canal-officer, the amount shall on the demand of the Divisional Canal-officer, be recoverable from them by the Collector as if it were an arrear of land-revenue.

Adjustment of claims between persons jointly using water-course.

19. If any person, jointly responsible with others for the construction or maintenance of a water-course, or jointly making use of a water-course with others, neglects or refuses to pay his share of the cost of such construction or maintenance, or to execute his share of any work necessary for such construction or maintenance, the Divisional or Sub-divisional Canal-officer, on receiving an application in writing from any person injured by such neglect or refusal, shall serve notice on all the parties concerned that, on the expiration of a fortnight from the service, he will investigate the case; and shall, on the expiration of that period, investigate the case accordingly, and make such order thereon as to him seems fit.

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[1] Subs. by the A. O. 1950 for "Provincial Govt." which had been subs. by the A. O. 1937 for "L. G."

Such order shall be appealable to the Commissioner, whose order thereon shall be final.

Any sum directed by such order to be paid within a specified period may, if not paid within such period, and if the order remains in force, be recovered by the Collector, from the person directed to pay the same, as if it were an arrear of land-revenue.

Recovery of amount found due.

20. Whenever application is made to a Divisional Canal-officer for a supply of water from a canal, and it appears to him expedient that such supply should be given and that it should be conveyed through some existing water-course, he shall give notice to the persons responsible for the maintenance of such water-course to show cause, on a day not less than fourteen days from the date of such notice, why the said supply should not be so conveyed: and, after making enquiry on such day, the Divisional Canal-officer shall determine whether and on what conditions the said supply shall be conveyed through such water-course.

Supply of water through intervening water course.

When such officer determines that a supply of canal-water may be conveyed through any water-course as aforesaid, his decision shall, when confirmed or modified by the Superintending Canal-officer, be binding on the applicant and also on the persons responsible for the maintenance of the said water-course.

Such applicant shall not be entitled to use such water-course until he has paid the expense of any alteration of such water-course necessary in order to his being supplied through it, and also such share of the first cost of such water-course as the Divisional or Superintending Canal-officer may determine.

Such applicant shall also be liable for his share of the cost of maintenance of such water-course so long as he uses it.

21. Any person desiring the construction of a new water-course may apply in writing to the Divisional Canal-officer, stating—

Application for construction of new water-course.

(1) that he has endeavoured unsuccessfully to acquire, from the owners of the land through which he desires such water-course to pass, a right to occupy so much of the land as will be needed for such water-course ;

(2) that he desires the said Canal-officer, in his behalf and at his cost, to do all things necessary for acquiring such right;

(3) that he is able to defray all costs involved in acquiring such right and constructing such water-course

(*Part III.—Of the Construction and Maintenance of Works.*)

Procedure of Canal-officer thereupon.

22. If the Divisional Canal-officer considers—

(1) that the construction of such water-course is expedient, and

(2) that the statements in the application are true,

he shall call upon the applicant to make such deposit as the Divisional Canal-officer considers necessary to defray the cost of the preliminary proceedings, and the amount of any compensation which he considers likely to become due under section 28:

and, upon such deposit being made, he shall cause enquiry to be made into the most suitable alignment for the said water-course, and shall mark out the land which, in his opinion, it will be necessary to occupy for the construction thereof, and shall forthwith publish a notice in every village through which the water-course is proposed to be taken, that so much of such land as belongs to such village has been so marked out, and shall send a copy of such notice to the Collector of every district in which any part of such land is situate.

Application for transfer of existing water-course.

23. Any person desiring that an existing water-course should be transferred from its present owner to himself may apply in writing to the Divisional Canal-officer, stating—

(1) that he has endeavoured unsuccessfully to procure such transfer from the owner of such water-course;

(2) that he desires the said Canal-officer, in his behalf and at his cost, to do all things necessary for procuring such transfer;

(3) that he is able to defray the cost of such transfer.

Procedure thereupon.

If the Divisional Canal-officer considers—

(*a*) that the said transfer is necessary for the better management of the irrigation from such water-course, and

(*b*) that the statements in the application are true,

he shall call upon the applicant to make such deposit as the Divisional Canal-officer considers necessary to defray the cost of the preliminary proceedings, and the amount of any compensation that may become due under the provisions of section 28 in respect of such transfer;

and upon such deposit being made, he shall publish a notice of the application in every village, and shall send a copy of the notice to the Collector of every district through which such water-course passes.

Objections to construction or transfer applied for

24. Within thirty days from the publication of a notice under section 22 or section 23, as the case may be, any person interested in the land or water-course to which the notice refers may apply to the Collector by petition, stating his objection to the construction or transfer for which application has been made.

(Part III.—Of the Construction and Maintenance of Works.)

The Collector may either reject the petition or may proceed to inquire into the validity of the objection, giving previous notice to the Divisional Canal-officer of the place and time at which such inquiry will be held.

The Collector shall record in writing all orders passed by him under this section and the grounds thereof.

When applicant may be placed in occupation.

25. If no such objection is made, or (where such objection is made) if the Collector over-rules it, he shall give notice to the Divisional Canal-officer to that effect, and shall proceed forthwith to place the said applicant in occupation of the land marked out or of the water-course to be transferred, as the case may be.

Procedure when objection is held valid.

26. If the Collector considers any objection made as aforesaid to be valid he shall inform the Divisional Canal-officer accordingly; and, if such officer sees fit, he may, in the case of an application under section 21, alter the boundaries of the land so marked out, and may give fresh notice under section 22; and the procedure hereinbefore provided shall be applicable to such notice, and the Collector shall thereupon proceed as before provided.

Procedure when Canal officer disagrees with Collector.

27. If the Canal-officer disagrees with the Collector, the matter shall be referred for decision to the Commissioner.

Such decision shall be final, and the Collector, if he is so directed by such decision, shall, subject to the provisions of section 28, cause the said applicant to be placed in occupation of the land so marked out or of the water-course to be transferred, as the case may be.

Expenses to be paid by applicant before receiving occupation.

28. No such applicant shall be placed in occupation of such land or water-course until he has paid to the person named by the Collector such amount as the Collector determines to be due as compensation for the land or water-course so occupied or transferred, and for any damage caused by the marking out or occupation of such land, together with all expenses incidental to such occupation or transfer.

Procedure in fixing compensation.

In determining the compensation to be made under this section the Collector shall proceed under the provisions of the Land Acquisition Act, 1870[1]; but he may, if the person to be compensated so desires, award such compensation in the form of a rent-charge payable in respect of the land or water-course occupied or transferred.

X of 1870.

Recovery of compensation and expenses.

If such compensation and expenses are not paid when demanded by the person entitled to receive the same, the amount may be recovered by

[1] *See* now the Land Acquisition Act, 1894 (1 of 1894).

the Collector as if it were an arrear of land-revenue, and shall, when recovered, be paid by him to the person entitled to receive the same.

Conditions binding on applicant placed in occupation.

29. When any such applicant is placed in occupation of land or of a water-course as aforesaid, the following rules and conditions shall be binding on him and his representative in interest :—

First.—All works necessary for the passage across such water-course, or water-courses, existing previous to its construction and of the drainage intercepted by it, and for affording proper communications across it for the convenience of the neighbouring lands, shall be constructed by the applicant, and be maintained by him or his representative in interest to the satisfaction of the Divisional Canal-officer.

Second.—Land occupied for a water-course under the provisions of section 22 shall be used only for the purpose of such water-course.

Third.—The proposed water-course shall be completed to the satisfaction of the Divisional Canal-officer within one year after the applicant is placed in occupation of the land.

In cases in which land is occupied or a water-course is transferred or the terms of a rent-charge,

Fourth.—The applicant or his representative in interest shall, so long as he occupies such land or water-course, pay rent for the same at such rate and on such days as are determined by the Collector when the applicant is placed in occupation.

Fifth.—If the right to occupy the land cease owing to a breach of any of these rules, the liability to pay the said rent shall continue until the applicant or his representative in interest has restored the land to its original condition, or until he has paid, by way of compensation for any injury done to the said land, such amount and to such persons as the Collector determines.

Sixth.—The Collector may, on the application of the person entitled to receive such rent or compensation, determine the amount of rent due or assess the amount of such compensation; and, if any such rent or compensation be not paid by the applicant or his representative in interest, the Collector may recover the amount, with interest thereon at the rate of six per cent. per annum from the date on which it became due, as if it were an arrear of land-revenue, and shall pay the same, when recovered, to the person to whom it is due.

If any of the rules and conditions prescribed by this section are not complied with,

or if any water-course constructed or transferred under this Act is disused for three years continuously,

the right of the applicant, or of his representative in interest, to occupy such land or water-course shall cease absolutely.

30. The procedure hereinbefore provided for the occupation of land for the construction of a water-course shall be applicable to the occupation of land for any extensive or alteration of a water-course, and for the deposit of soil from water-course clearances.

Procedure applicable to occupation for extensions and alterations.

PART IV.

Of the Supply of Water

31. In the absence of a written contract, or so far as any such contract does not extend, every supply of canal-water shall be deemed to be given at the rates and subject to the conditions prescribed by the rules to be made by the [1][State Government] in respect thereof.

In absence of written contract, water-supply to be subject to rules.

32. Such contracts and rules must be consistent with the following conditions:—

Conditions as to—

(*a*) The Divisional Canal-officer may not stop the supply of water to any water-course, or to any person, except in the following cases:—

power to stop water-supply;

(*1*) whenever and so long as it is necessary to stop such supply for the purpose of executing any work ordered by competent authority and with the previous sanction of the [1][State Government];

(*2*) whenever and so long as any water-course is not maintained in such proper customary repair as to prevent the wasteful escape of water therefrom;

(*3*) within periods fixed from time to time by the Divisional Canal-officer:

(*b*) No claim shall be made against [2][the State Government] for compensation in respect of loss caused by the failure or stoppage of the water in a canal, by reason of any cause beyond the control of [2][the State Government] or of any repairs, alterations or additions to the canal, or of any measures taken for regulating the proper flow of water therein, or for maintaining the established course of irrigation which the Divisional Canal-

claims to compensation in case of failure or stoppage of supply;

[1] Subs. by the A. O. 1950 for "Provincial Govt." which had been subs. by the A. O. 1937 for "L. G.".

[2] Subs. by the A. O, 1950 for "the Provincial Govt." which had been subs. by the A. O. 1937 for "the Govt.".

officer considers necessary; but the person suffering such loss may claim such remission of the ordinary charges payable for the use of the water as is authorised by the [1][State Government]:

claims on account of interruption from other causes;

(*c*) If the supply of water to any land irrigated from a canal be interrupted otherwise than in the manner described in the last preceding clause, the occupier or owner of such land may present a petition for compensation to the Collector for any loss arising from such interruption, and the Collector may award to the petitioner reasonable compensation for such loss:

duration of supply;

(*d*) When the water of a canal is supplied for the irrigation of a single crop, the permission to use such water shall be held to continue only until that crop comes to maturity, and to apply only to that crop; but, if it be supplied for irrigating two or more crops to be raised on the same land within the year, such permission shall be held to continue for one year from the commencement of the irrigation, and to apply to such crops only as are matured within that year:

sale or subletting of right to use canal-water;

(*e*) Unless with the permission of the Superintending Canal-officer, no person entitled to use the water of any canal, or any work, building or land appertaining to any canal, shall sell or sublet or otherwise transfer his right to such use:

Provided that the former part of this clause shall not apply to the use by a cultivating tenant of water supplied by the owner of a water-course for the irrigation of the land held by such tenant:

transfer, with land, of contracts for water.

But all contracts made between [2][the State Government] and the owner or occupier of any immoveable property, as to the supply of canal-water to such property, shall be transferable therewith, and shall be presumed to have been so transferred whenever a transfer of such property takes place:

No right acquired by user.

(*f*) No right to the use of the water of a canal shall be, or be deemed to have been, acquired under the [3]Indian Limitation Act, 1877, Part IV, nor shall [2][the State Government] be bound to supply any person with water except in accordance with the terms of a contract in writing. XV of 1877

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[1] Subs. by the A. O. 1950 for "Provincial Govt." which had been subs. by the A. O. 1937 for "L. G.".

[2] Subs. by the A. O. 1950 for "the Provincial Govt." which had been subs. by the A. O. 1937 for "Govt.".

[3] See now the Indian Limitation Act, 1908 (9 of 1908).

PART V.

OF WATER-RATES.

33. If water supplied through a water-course be used in an unauthorised manner, and if the person by whose act or neglect such use has occurred cannot be identified,

Liability when person using unauthorisedly cannot be identified.

the person on whose land such water has flowed if such land has derived benefit therefrom.

or if such person cannot be identified or if such land has not derived benefit therefrom, all the persons chargeable in respect of the water supplied through such water-course, shall be liable, or jointly liable, as the case may be, to the charges made for such use.

34. If water supplied through a water-course be suffered to run to waste, and if, after enquiry by the Divisional Canal-officer, the person through whose act or neglect such water was suffered to run to waste cannot be discovered, all the persons chargeable in respect of the water supplied through such water-course shall be jointly liable for the charges made in respect of the water so wasted.

Liability when water runs to waste.

35. All charges for the unauthorised use or for waste of water may be recovered in addition to any penalties incurred on account of such use or waste.

Charges recoverable in addition to penalties.

All questions under section 33 or section 34 shall be decided by the Divisional Canal-officer, subject to an appeal to the Head Revenue-officer of the district, or such other appeal as may be provided under section 75.

Decision of questions under sections 33 and 34.

36. The rates to be charged for canal-water supplied for purposes of irrigation to the occupiers of land shall be determined by the rules to be made by the [1][State Government]. and such occupiers as accept the water shall pay for it accordingly.

Charge on occupier for water, how determined.

A rate so charged shall be called the "occupier's rate".

"Occupier's rate."

[2] [The rules hereinbefore referred to may prescribe and determine what persons or classes of persons are to be deemed to be occupiers for the purposes of this section, and may also determine the several liabilities, in respect of the payment of the occupier's rate, of tenants and of persons to whom tenants may have sublet their lands or of proprietors and of persons to whom proprietors may have let the lands held by them in cultivating occupancy.]

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[1] Subs. by the A. O. 1950 for "Provincial Govt" which had been subs. by the A. O. 1937 for "L. G.".

[2] Ins. by the Northern India Canal and Drainage (Amendment) Act 1890 (16 of 1890), s. 2.

(*Part V.—Of Water-rates.*)

"Owner's rate."

37. In addition to the occupier's rate, a rate to be called the "owner's rate" may be imposed, according to rules to be made by the [1][State Government], on the owners of canal-irrigated lands, in respect of the benefit which they derive from such irrigation.

Amount of owner's rate.

38. The owner's rate shall not exceed the sum which, under the rules for the time being in force for the assessment of land-revenue, might be assessed on such land on account of the increase in the annual value or produce thereof caused by the canal-irrigation. And, for the purpose of this section only, land which is permanently settled or held free of revenue shall be considered as though it were temporarily settled and liable to payment of revenue.

Owner's rate, when not chargeable.

39. No owner's rate shall be chargeable either on the owner or occupier of land temporarily assessed to pay land-revenue at irrigation-rates, during the currency of such assessment.

When occupier is to pay both owner's rate and occupier's rate

[2]**40.** If such land is occupied by the owner,

or if it is occupied by a tenant whose rent is not liable to enhancement on the ground that the value of the produce of the land or the productive powers of the land has or have been increased by irrigation,

such owner or tenant shall pay the owner's rate as well as the occupier's rate.

Power to make rules for apportioning owner's rate.

[2]**41.** In the case of a tenant with a right of occupancy, the [1][State Government] shall have power to make rules for dividing the owner's rate between such tenant and his landlord, proportionately to the extent of the beneficial interest of each in the land

When owner is to pay owner's rate.

[2]**42.** If the owner of the land is not the occupier, but has power to enhance the rent of the occupier on the ground that the value of the produce or the productive powers of the land has or have been increased by irrigation

or if, when the amount of a rent was fixed, the land was irrigated from the canal,

the owner shall pay the owner's rate.

Effect of introduction of

[2]**43.** If a revision of settlement is a ground for entertaining a suit for the enhancement of rent, the introduction of canal irrigation into any

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[1] Subs. by the A. O. 1950 for "Provincial Govt." which had been subs. by the A. O. 1937 for "L. G.".

[2] Ss. 40 to 43 have been rep. in the Punjab by the Punjab Tenancy Act, 1887 (16 of 1887), s. 3 and Sch.

land shall have the same effect on the landlord's right to re-enhance the rent of a tenant with a right of occupancy of such land, as if a revision of settlement had taken place, under which the revenue payable in respect of such land had been increased.

canal irrigation on landlord's right to enhance.

44. Where a water-rate is charged on land held by several joint owners, it shall be payable by the manager or other person who receives the rents or profits of such land, and may be deducted by him from such rents or profits before division, or may be recovered by him from the persons liable to such rate in the manner customary in the recovery of other charges on such rents or profits.

Water-rate by whom payable, when charged on land held by several owners.

Recovery of charges.

[1]**45.** Any sum lawfully due under this Part, and certified by the Divisional Canal-officer to be so due, which remains unpaid after the day on which it becomes due, shall be recoverable by the Collector from the person liable for the same as if it were an arrear of land-revenue.

Certified dues recoverable as land-revenue.

46. The Divisional Canal-officer or the Collector may enter into an agreement with any person for the collection and payment to [2][the State Government] by such person of any sum payable under this Act by a third party.

Power to contract for collection of canal dues.

When such agreement has been made, such person may recover such sum by suit as though it were a debt due to him, or an arrear of rent due to him on account of the land, work or building in respect of which such sum is payable, or for or in which the canal-water shall have been supplied or used.

If such person makes default in the payment of any sum collected by him under this section, such sum may be recovered from him by the Collector under section 45; and, if such sum or any part of it be still due by the said third party, the sum or part so due may be recovered in like manner by the Collector from such third party.

[3]**47.** The Collector may require the lambardar, or person under engagement to pay the land-revenue of any estate, to collect and pay any sums payable under this Act by a third party, in respect of any land or water in such estate.

Lambardars may be required to collect canal-dues.

Such sums shall be recoverable by the Collector as if they were arrears of land-revenue due in respect of the defaulter's share in such estate;

[1] This section has been replaced by another in the U. P., *see* the Northern India Canal and Drainage (U. P. Amendment) Act, 1932 (U. P. 6 of 1932), s. 2.

[2] Subs. by the A. O. 1950 for "the Provincial Govt." which had been subs. by the A. O. 1937 for "the Govt.".

[3] This section has been replaced by another in the U. P., *see* U. P. Act 6 of 1932, s. 3.

and for the purpose of collecting such sums from the subordinate zemindars, raiyats, [1][tenants or sub-tenants], such lambardar or person may exercise the powers, and shall be subject to the rules, laid down in the law for the time being in force in respect to the collection by him of the rents of land or of shares of land-revenue.

The [2][State Government] shall provide—

(*a*) for remunerating persons collecting sums under this section or

(*b*) for indemnifying them against expenses properly incurred by them in such collection ; or

(*c*) for both such purposes.

Fines excluded from sections 45, 46, 47.

48. Nothing in sections 45, 46 or 47 applies to fines.

PART VI.

Of Canal-navigation.

Detainer of vessels violating rules.

49. Any vessel entering or navigating any canal contrary to the rules made in that behalf by the [2][State Government], or so as to cause danger to the canal or the other vessels therein, may be removed or detained, or both removed and detained, by the Divisional Canal-Officer, or by any other person duly authorised in this behalf.

Liability of owners of vessels causing damage.

The owner of any vessel causing damage to a canal, or removed or detained under this section, shall be liable to pay to [3][the State Government] such sum as the Divisional Canal-officer, with the approval of the Superintending Canal-officer, determines to be necessary to defray the expenses of repairing such damage or of such removal or detention, as the case may be.

Recovery of fines for offences in navigating canals.

50. Any fine imposed under this Act upon the owner of any vessel, or the servant or agent of such owner or other person in charge of any vessel, for any offence in respect of the navigation of such vessel, may be recovered either in the manner prescribed by the Code of Criminal Procedure[4] or, if the Magistrate imposing the fine so directs, as though it were a charge due in respect of such vessel.

Power to seize and detain

51. If any charge due under the provisions of this Part in respect of any vessel is not paid on demand to the person authorised to collect the

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[1] Subs. by the Northern India Canal and Drainage (Amendment) Act, 1899 (16 of 1899), s. 3. for "or tenants".

[2] Subs. by the A. O. 1950 for "Provincial Govt." which had been subs. by the A. O. 1937 for "L. G.".

[3] Subs. by the A. O. 1950 for "the Provincial Govt." which had been subs. by the A. O. 1937 for "the Govt.".

[4] *See* now the Code of Criminal Procedure, 1898 (5 of 1898).

same, the Divisional Canal-officer may seize and detain such vessel and the furniture thereof, until the charge so due, together with all expenses and additional charges arising from such seizure and detention, is paid in full.

vessel on failure to pay charges.

52. If any charge due under the provisions of this Part in respect of any cargo or goods carried in a Government vessel on a canal, or stored on or in lands or warehouses occupied for the purposes of a canal is not paid on demand to the person authorised to collect the same, the Divisional Canal-officer may seize such cargo or goods and detain them until the charge so due, together with all expenses and additional charges arising from such seizure and detention, is paid in full.

Power to seize cargo or goods, if charges due thereon are not paid.

53. Within a reasonable time after any seizure under section 51 or section 52, the said Canal-officer shall give notice to the owner or person in charge of the property seized that it, or such portion of it as may be necessary, will, on a day to be named in the notice, but not sooner than fifteen days from the date of the notice, be sold in satisfaction of the claim on account of which such property was seized, unless the claim be discharged before the day so named.

Procedure for recovery of such charges after seizure.

And, if such claim be not so discharged, the said Canal-officer may, on such day, sell the property seized or such part thereof as may be necessary to yield the amount due, together with the expenses of such seizure and sale:

Provided that no greater part of the furniture of any vessel or of any cargo or goods shall be so sold than shall, as nearly as may be, suffice to cover the amount due in respect of such vessel, cargo or goods.

The residue of such furniture, cargo or goods, and of the proceeds of the sale, shall be made over to the owner or person in charge of the property seized.

54. If any vessel be found abandoned in a canal, or any cargo or goods carried in a Government vessel on a canal, or stored on or in lands or warehouses occupied for the purposes of a canal, be left unclaimed for a period of two months, the Divisional Canal-officer may take possession of the same.

Procedure in respect of vessels abandoned and goods unclaimed.

The officer so taking possession may publish a notice that, if such vessel and its contents, or such cargo or goods, are not claimed previously to a day to be named in the notice, not sooner than thirty days from the date of such notice, he will sell the same; and, if such vessel, contents, cargo or goods be not so claimed, he may, at any time after the day named in the notice, proceed to sell the same.

Disposal of proceeds of sale.

The said vessel and its contents, and the said cargo or goods if unsold, or, if a sale has taken place, the proceeds of the sale, after paying all tolls, charges and expenses incurred by the Divisional Canal-officer on account of the taking possession and sale, shall be made over to the owner of the same, when his ownership is established to the satisfaction of the Divisional Canal-officer.

If the Divisional Canal-officer is doubtful to whom such property or proceeds should be made over, he may direct the property to be sold as aforesaid, and the proceeds to be paid into the district treasury, there to be held until the right thereto be decided by a Court of competent jurisdiction.

PART VII.

OF DRAINAGE.

Power to prohibit obstructions or order their removal.

55. Whenever it appears to the [1][State Government] that injury to any land or the public health or public convenience has arisen or may arise from the obstruction of any river, stream or drainage-channel, such Government may, by notification published in the Official Gazette, prohibit, within limits to be defined in such notification, the formation of any obstruction, or may, within such limits, order the removal or other modification of such obstruction.

Thereupon so much of the said river, stream or drainage-channel as is comprised within such limits shall be held to be a drainage-work as defined in section 3.

Power to remove obstructions after prohibition.

56. The Divisional Canal-officer, or other person authorised by the [1][State Government] in that behalf, may, after such publication issue an order to the person causing or having control over any such obstruction to remove or modify the same within a time to be fixed in the order.

If, within the time so fixed, such person does not comply with the order, the said Canal-officer may himself remove or modify the obstruction; and if the person to whom the order was issued does not, when called upon, pay the expenses involved in such removal or modification, such expenses shall be recoverable by the Collector from him or his representative in interest as an arrear of land-revenue.

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[1] Subs. by the A. O. 1950 for "Provincial Govt." which had been subs. by the A. O. 1937 for "L. G.".

(*Part VII.—Of Drainage.*)

57. Whenever it appears to the [1][State Government] that any drainage-works are necessary for the improvement of any lands, or for the proper cultivation or irrigation thereof, **Preparation of schemes for works of improvement.**

or that protection from floods or other accumulations of water, or from erosion by a river, is required for any lands,

the [1][State Government] may cause a scheme for such drainage-works to be drawn up and published, together with an estimate of its cost and a statement of the proportion of such cost which [2][the State Government] proposes to defray, and a schedule of the lands which it is proposed to make chargeable in respect of the scheme.

58. The persons authorised by the [1][State Government] to draw up such scheme may exercise all or any of the powers conferred on the Canal-officers by section 14. **Powers of persons employed on such schemes.**

59. An annual rate, in respect of such scheme, may be charged, according to rules to be made by the [1][State Government], on the owners of all lands which shall, in the manner prescribed by such rules, be determined to be so chargeable **Rate on lands benefited by works.**

Such rate shall be fixed, as nearly as possible, so as not to exceed either of the following limits :—

(*1*) six per cent. per annum on the first cost of the said works, adding thereto the estimated yearly cost of the maintenance and supervision of the same, and deducting therefrom the estimated income, if any, derived from the works, excluding the said rate :

(*2*) in the case of agricultural land, the sum which under the rules then in force for the assessment of land-revenue, might be assessed on such land on account of the increase of the annual value or produce thereof caused by the drainage-work.

Such rate may be varied from time to time, within such maximum, by the [1][State Government].

So far as any defect to be remedied is due to any canal, water-course, road or other work or obstruction, constructed or caused by the [1][State Government] or by any person, a proportionate share of the cost of the drainage-works required for the remedy of the said defect shall be borne by such Government or such person, as the case may be.

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[1] Subs. by the A. O. 1950 for "Provincial Govt." which had been subs. by the A. O. 1937 for "L. G.".

[2] Subs. by the A. O. 1950 for "the Provincial Govt." which had been subs. by the A. O. 1937 for "the Govt.".

(*Part VII.—Of Drainage. Part VIII.—Of obtaining Labour for Canals and Drainage-works.*)

Recovery of rate.

60. Any such drainage-rate may be collected and recovered in manner provided by sections 45, 46 and 47 for the collection and recovery of water-rates.

Disposal of claims to compensation.

61. Whenever, in pursuance of a notification made under section 55, any obstruction is removed or modified,

or whenever any drainage work is carried out under section 57,

all claims for compensation on account of any loss consequent on the removal or modification of the said obstruction or the construction of such work may be made before the Collector, and he shall deal with the same in the manner provided in section 10.

Limitation of such claims.

62. No such claim shall be entertained after the expiration of one year from the occurrence of the loss complained of, unless the Collector is satisfied that the claimant had sufficient cause for not making the claim within such period.

PART VIII.

Of obtaining Labour for Canals and Drainage-works.

Definition of "labourer".

63. For the purposes referred to in this Part, the word "labourer" includes persons who exercise any handicraft specified in rules to be made in that behalf by the [1][State Government].

Power to prescribe number of labourers to be supplied by persons benefited by canal.

64. In any district in which a canal or drainage-work is constructed, maintained or projected by [2][the State Government], the [1][State Government] may, if it thinks fit, direct the Collector—

(*a*) to ascertain the proprietors, sub-proprietors or farmers whose villages or estates are or will be in the judgment of the Collector, benefited by such canal or drainage-work, and

(*b*) to set down in a list, having due regard to the circumstances of the districts and of the several proprietors, sub-proprietors or farmers, the number of labourers which shall be furnished by any of the said persons, jointly or severally, from any such village or estate, for employment on any such canal or drainage-work when required as hereinafter provided.

The Collector may, from time to time, add to or alter such list or any part thereof.

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[1] Subs. by the A. O. 1950 for "Provincial Govt." which had been subs. by the A. O 1937 for "L. G.".

[2] Subs. by the A. O. 1950 for "the Provincial Govt." which had been subs. by the A. O. 1937 for "Govt.".

(*Part VIII.—Of obtaining Labour for Canals and Drainage-works*)

Procedure for obtaining labour for works urgently required.

65. Whenever it appears to a Divisional Canal-officer duly authorised by the [1][State Government] that, unless some work is immediately executed, such serious damage will happen to any canal or drainage-work as to cause sudden and extensive public injury,

and that the labourers necessary for the proper execution thereof cannot be obtained in the ordinary manner within the time that can be allowed for the execution of such work so as to prevent such injury, the said officer may require any person named in such list to furnish as many labourers (not exceeding the number which, according to the said list he is liable to supply) as to the said officer seems necessary for the immediate execution of such work.

Every requisition so made shall be in writing, and shall state—

(*a*) the nature and locality of the work to be done ;

(*b*) the number of labourers to be supplied by the person upon whom the requisition is made; and

(*c*) the approximate time for which and the day on which the labourers will be required ;

and a copy thereof shall be immediately sent to the Superintending Canal-officer for the information of the [1][State Government].

The [1][State Government] shall fix, and may from time to time alter the rates to be paid to any such labourers:

Provided that such rates shall exceed the highest rates for the time being paid in the neighbourhood for similar work.

In the case of every such labourer, the payment shall continue for the whole period during which he is, in consequence of the provisions of this Part, prevented from following his ordinary occupation.

The [1][State Government] may [2]* * * * direct that the provisions of this Part shall apply, either permanently or temporarily (as the case may be), to any district or part of a district for the purpose of effecting necessary annual silt-clearances, or to prevent the proper operation of a canal or drainage-work being stopped or so much interfered with as to stop the established course of irrigation or drainage.

Liability of labourers under requisition.

66. When any requisition has been made on any person named in the said list, every labourer ordinarily resident within the village or estate of such person shall be liable to supply, and to continue to supply, his labour, for the purposes aforesaid.

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[1] Subs. by the A. O. 1950 for "Provincial Govt." which had been subs. by the A. O. 1937 for "L. G.".

[2] The words "with the previous sanction of the G. G. in C." rep. by the Decentralization Act, 1914 (4 of 1914).

PART IX.

OF JURISDICTION.

Jurisdiction under this Act of Civil Courts.

67. Except where herein otherwise provided, all claims against [1][the State Government] in respect of anything done under this Act may be tried by the Civil Courts; but no such Court shall in any case pass an order as to the supply of canal-water to any crop sown or growing at the time of such order.

Settlement of differences as to mutual rights and liabilities of persons interested in water course.

68. Whenever a difference arises between two or more persons in regard to their mutual rights or liabilities in respect of the use, construction or maintenance of a water-course, any such person may apply in writing to the Divisional Canal officer stating the matter in dispute. Such officer shall thereupon give notice to the other persons interested that, on a day to be named in such notice, he will proceed to inquire into the said matter. And, after such inquiry, he shall pass his order thereon, unless he transfers (as he is hereby empowered to do) the matter to the Collector, who shall thereupon inquire into and pass his order on the said matter.

Such order shall be final as to the use or distribution of water for any crop sown or growing at the time when such order is made, and shall thereafter remain in force until set aside by the decree of a Civil Court.

Power to summon and examine witnesses.

69. Any officer empowered under this Act to conduct any inquiry may exercise all such powers connected with the summoning and examining of witnesses as are conferred on Civil Courts by the [2]Code of Civil Procedure, and every such inquiry shall be deemed a judicial proceeding.

PART X.

OF OFFENCES AND PENALTIES.

Offences under Act.

70. Whoever, without proper authority and voluntarily, does any of the acts following, that is to say :—

(*1*) damages, alters, enlarges or obstructs any canal or drainage-work ;

(*2*) interferes with, increases or diminishes the supply of water in, or the flow of water from, through, over or under, any canal or drainage-work;

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[1] Subs. by the A. O. 1950 for "the Provincial Govt." which had been subs. by the A. O. 1937 for "Govt.".

[2] *See* now the Code of Civil Procedure, 1908 (Act 5 of 1908).

(*3*) interferes with or alters the flow of water in any river or stream, so as to endanger, damage or render less useful any canal or drainage work ;

(*4*) being responsible for the maintenance of a water-course, or using a water-course, neglects to take proper precautions for the prevention of waste of the water thereof, or interferes with the authorised distribution of the water therefrom, or uses such water in an unauthorised manner ;

(*5*) corrupts or fouls the water of any canal so as to render it less fit for the purposes for which it is ordinarily used ;

(*6*) causes any vessel to enter or navigate any canal contrary to the rules for the time being prescribed by the [1][State Government] for entering or navigating such canal ;

(*7*) while navigating on any canal, neglects to take proper precautions for the safety of the canal and of vessels thereon ;

(*8*) being liable to furnish labourers under Part VIII of this Act, fails without reasonable cause, to supply or to assist in supplying the labourers required of him ;

(*9*) being a labourer liable to supply his labour under Part VIII of this Act, neglects, without reasonable cause, so to supply, and to continue to supply, his labour ;

(*10*) destroys or moves any level-mark or water-gauge fixed by the authority of a public servant ;

(*11*) passes, or causes animals or vehicles to pass, on or across any of the works, banks or channels of a canal or drainage-work contrary to rules made under this Act, after he has been desired to desist therefrom ;

(*12*) violates any rule made under this Act, for breach whereof a penalty may be incurred,

shall be liable, on conviction before a Magistrate of such class as the [1][State Government] directs in this behalf, to a fine not exceeding fifty rupees, or to imprisonment not exceeding one month, or to both **Penalty.**

71. Nothing herein contained shall prevent any person from being prosecuted under any other law for any offence punishable under this Act . **Saving of prosecution under other laws.**

Provided that no person shall be punished twice for the same offence.

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[1] Subs. by the A. O. 1950 for "Provincial Govt." which had been subs. by the A. O. 1937 for "L. G.".

Compensation to person injured.

72. Whenever any person is fined for an offence under this Act, the Magistrate may direct that the whole or any part of such fine may be paid by way of compensation to the person injured by such offence.

Power to arrest without warrant.

73. Any person in charge of or employed upon any canal or drainage-work may remove from the lands or buildings belonging thereto, or may take into custody without a warrant and take forthwith before a Magistrate or to the nearest police-station, to be dealt with according to law, any person who, within his view, commits any of the following offences :—

(*1*) wilfully damages or obstructs any canal or drainage-work;

(*2*) without proper authority interferes with the supply or flow of water in or from any canal or drainage-work, or in any river or stream, so as to endanger, damage or render less useful any canal or drainage-work.

Definition of "canal".

74. In this Part the word "canal" shall (unless there be something repugnant in the subject or context) be deemed to include also all lands occupied by [1][the State Government] for the purposes of canals, and all buildings, machinery, fences, gates and other erections, trees, crops, plantations or other produce occupied by or belonging to [1][the State Government] upon such lands.

PART XI.

Of Subsidiary Rules.

Power to make, alter and cancel rules.

75. The [2][State Government] may, from time to time [3]* * * * make rules to regulate the following matters :—

(*1*) the proceedings of any officer who, under any provision of this Act, is required or empowered to take action in any matter;

(*2*) the cases in which, and the officers to whom, and the conditions subject to which, orders and decisions given under any provision of this Act, and not expressly provided for as regards appeal, shall be appealable ;

(*3*) the persons by whom, [4][and] the time, place or manner at or in which anything for the doing of which provision is made under this Act, shall be done ;

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[1] Subs. by the A. O. 1950 for "the Provincial Govt." which had been subs. by the A. O. 1937 for "Govt.".

[2] Subs. by the A. O. 1950 for "Provincial Govt." which had been subs. by the A. O. 1937 for "L. G.".

[3] The words "subject to the control of the G. G. in C." rep. by the Devolution Act, 1920 (38 of 1920).

[4] Ins. by the Amending Act, 1891 (12 of 1891).

(*4*) the amount of any charge made under this Act; and

(*5*) generally to carry out the provisions of this Act.

The [1][State Government] may from time to time [2]* * * * alter or cancel any rules so made.

Publication of rules.

Such rules, alterations and cancelments shall be published in the [3][Official Gazette], and shall thereupon have the force of law.

SCHEDULE.

[*Rep. by the Repealing Act, 1873 (XII of 1873), s. 1 and Sch., Pt. II.*]

THE INDIAN OATHS ACT, 1873.

CONTENTS.

PREAMBLE.

SECTIONS.

I.—Preliminary.

1. Short title.
   Local extent.
2. [*Repealed.*]
3. Saving of certain oaths and affirmations.

II.—Authority to administer Oaths and Affirmations.

4. Authority to administer oaths and affirmations.

III.—Persons by whom Oaths or Affirmations must be made.

5. Oaths or affirmations to be made by—
   witnesses :
   interpreters:
   jurors.
6. Affirmation by Natives or by persons objecting to oaths.

IV.—Forms of Oaths and Affirmations.

7. Forms of oaths and affirmations
8. Power of Court to tender certain oaths.
9. Court may ask party or witness whether he will make oath proposed by opposite party.
10. Administration of oath if accepted.
11. Evidence conclusive as against person offering to be bound.
12. Procedure in case of refusal to make oath.

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[1] Subs. by the A. O. 1950 for "Provincial Govt." which had been subs. by the A. O. 1937 for "L. G.".

[2] The words "subject to the like control" rep. by the Devolution Act, 1920 (38 of 1920).

[3] Subs. by the A. O. 1937 for "local official Gazette".

V.—Miscellaneous.

13. Proceedings and evidence not invalidated by omission of oath or irregularity.

14. Persons giving evidence bound to state the truth.

15. [*Repealed.*]

16. Official oaths abolished.

SCHEDULE—[*Repealed.*]

ACT NO. X OF 1873.[1]

[*8th April, 1873.*]

An Act to consolidate the law relating to Judicial Oaths, and for other purposes.

Preamble. WHEREAS it is expedient to cosolidate the law relating to judicial oaths, affirmations and declarations, and to repeal the law relating to

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[1] For the Statement of Objects and Reasons, *see* Gazette of India, 1873 Pt. V, p. 17: for Proceedings in Council, *see ibid* 1872, Supplement, p. 889: *ibid.* 1873, Supplement, pp. 3, 233, 235 to 246, 281, 395, and 410; *ibid.* 1873, Extra Supplement, pp. 1 to 8.

For civil rules of practice made by the High Court of Madras under this Act, the Code of Civil Procedure (Act 14 of 1882) and certain other Acts, for observance by subordinate Civil Courts in that presidency except the Small Cause Court at Madras, *see* Fort St. George Gazette, 1905, Supplt., p. 1.

This Act has been extended to Berar by the Berar Laws Act, 1941 (4 of 1941) and has been declared to be in force in the Sonthal Parganas by the Sonthal Parganas Settlement Regulation (3 of 1872), s. 3: in Panth Piploda by the Panth Piploda Laws Regulation, 1929 (1 of 1929), s. 2; in the Khondmals District by the Khondmals Laws Regulation, 1936 (4 of 1936), s. 3 and Sch.: and in the Angul District by the Angul Laws Regulation, 1936 (5 of 1936), s. 3 and Sch.

It has further been declared, by notification under s. 3 (*a*) of the Scheduled Districts Act, 1874 (14 of 1874), to be in force in the following Scheduled Districts, namely :—

The Districts of Hazaribagh, Lohardaga and Manbhum, and Pargana Dhalbhum and the Kolhan in the District of Singbhum. (The District of Lohardaga then included the Palamau District, separated in 1894 : Lohardaga is now called the Ranchi District, *see* Calcutta Gazette, 1899, Pt I, p. 44.) :	*See* Gazette of India, 1881, Pt. I, p. 504;
The North-Western Provinces Tarai: .	*See* Gazette of India, 1876, Pt. I, p. 505;
The Scheduled Districts in Ganjam and Vizagapatam :	*See* Fort St. George Gazette, 1898, Pt. I, p. 666, and Gazette of India, 1898, Pt. I, p. 869.

It has been extended, by notification under s. 5 of the same Act, to the Scheduled District of Coorg : *See* Gazette of India, 1876, Pt. I, p. 417.

(*I.—Preliminary. II.—Authority to administer Oaths and Affirmations.*)

official oaths, affirmations and declarations; It is hereby enacted as follows :—

I.—Preliminary.

1. This Act may be called the Indian Oaths Act, 1873. Short title

[1][It extends to the whole of India except Part B States.] Local extent.

[2]* * * * *

2. [*Repeal of enactments.*] *Rep. by the Repealing Act, 1873 (XII of 1873).*

3. Nothing herein contained applies to proceedings before Courts Martial, or to oaths, affirmations or declarations prescribed [3][by the Central Government with respect to members of the Armed Forces of the Union.] Saving of certain oaths and affirmations.

II.—Authority to administer Oaths and Affirmations.

4. The following Courts and persons are authorized to administer, by themselves or by an officer empowered by them in this behalf, oaths and affirmations in discharge of the duties or in exercise of the powers imposed or conferred upon them respectively by law:— Authority to administer oaths and affirmations.

(*a*) all Courts and persons having by law or consent of parties authority to receive evidence ;

(*b*) the Commanding Officer of any military, [4][naval], [5][or air force] station [4][or ship] occupied by troops in the service of Her Majesty :

Provided—

(1) that the oath or affirmation be administered within the limits of the station, and

(2) that the oath or affirmation be such as a Justice of the Peace is competent to administer in [6][Part A States ~~and Part C States~~]

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[1] Subs. by the A. O. 1950 for the original para. as amended by the A. O 1937 and A. O. 1948.

[2] The commencement cl. was rep. by the Repealing Act. 1876 (12 of 1876).

[3] Subs. by the A. O. 1950 for the original words as amended by Act 6 of 1919, A. O. 1937 and A. O. 1948.

[4] Ins. by the Amending Act, 1934 (35 of 1934), s. 2 and Sch.

[5] Ins by the Repealing and Amending Act, 1927 (10 of 1927), s. 2 and Sch. I.

[6] Subs. by the A. O. 1950 for "the Provinces" which had been subs. by the A. O. 1948 for "British India".

(III.—Persons by whom Oaths or Affirmations must be made. IV.—Forms of Oaths and Affimations.)

III.—Persons by whom Oaths or Affirmations must be made.

Oaths or affirmations to be made by—witnesses;

5. Oaths or affirmations shall be made by the following persons :—

(*a*) all witnesses, that is to say, all persons who may lawfully be examined, or give, or be required to give, evidence by or before any Court or person having by law or consent of parties authority to examine such persons or to receive evidence :

interpreters;

(*b*) interpreters of questions put to, and evidence given by, witnesses; and

jurors.

(*c*) jurors.

[1][Provided that where the witness is a child under twelve years of age, and the Court or person having authority to examine such witness is of opinion that, though he understands the duty of speaking the truth, he does not understand the nature of an oath or affirmation, the foregoing provisions of this section and the provisions of section 6 shall not apply to such witness, but in any such case the absence of an oath or affirmation shall not render inadmissible any evidence given by such witness nor affect the obligation of the witness to state the truth.]

Nothing herein contained shall render it lawful to administer, in a criminal proceeding, an oath or affirmation to the accused person, or necessary to administer to the official interpreter of any Court, after he has entered on the execution of the duties of his office, an oath or affirmation that he will faithfully discharge those duties.

Affirmation by Natives or by persons objecting to oaths.

6. Where the witness, interpreter or juror is a Hindu or Muhammadan,

or has an objection to making an oath,

he shall, instead of making an oath, make an affirmation.

In every other case the witness, interpreter or juror shall make an oath.

IV.—Forms of Oaths and Affirmations.

Forms of oaths and affirmations.

7. All oaths and affirmations made under section 5 shall be administered according to such forms as the High Court may from time to time prescribe.

And until any such forms are prescribed by the High Court, such oaths and affirmations shall be administered according to the forms now in use.

[2]* * * *

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[1] Ins. by the Indian Oaths (Amendment) Act, 1939 (39 of 1939), s. 2.

[2] The explanation to s. 7 was rep. by the Lower Burma Courts Act, 1900 (6 df 1900), s. 48 and Sch. 2.

(*IV.—Forms of Oaths and Affirmations. V.—Miscellaneous.*)

8. If any party to, or witness in, any judicial proceeding offers to give evidence on oath or solemn affirmation in any form common amongst, or held binding by, persons of the race or persuasion to which he belongs, and not repugnant to justice or decency, and not purporting to affect any third person, the Court may, if it thinks fit, notwithstanding anything hereinbefore contained, tender such oath or affirmation to him.

Power of Court to tender certain oaths.

9. If any party to any judicial proceeding offers to be bound by any such oath or solemn affirmation as is mentioned in section 8, if such oath or affirmation is made by the other party to, or by any witness in, such proceeding, the Court may, if it thinks fit, ask such party or witness, or cause him to be asked, whether or not he will make the oath or affirmation :

provided that no party or witness shall be compelled to attend personally in Court solely for the purpose of answering such question.

Court may ask party or witness whether he will make oath proposed by opposite party.

10. If such party or witness agrees to make such oath or affirmation, the Court may proceed to administer it, or, if it is of such a nature that it may be more conveniently made out of Court, the Court may issue a commission to any person to administer it, and authorize him to take the evidence of the person to be sworn or affirmed and return it to the Court.

Administration of oath if accepted.

11. The evidence so given shall, as against the person who offered to be bound as aforesaid, be conclusive proof of the matter stated.

Evidence conclusive as against person offering to be bound.

12. If the party or witness refuses to make the oath or solemn affirmation referred to in section 8, he shall not be compelled to make it, but the Court shall record, as part of the proceedings, the nature of the oath or affirmation proposed, the facts that he was asked whether he would make it, and that he refused it, together with any reason which he may assign for his refusal.

Procedure in case of refusal to make oath.

V.—Miscellaneous.

13. No omission to take any oath or make any affirmation, no substitution of any one for any other of them, and no irregularity whatever in the form in which any one of them is administered, shall invalidate any proceeding or render inadmissible any evidence whatever, in or in respect of which such omission, substitution or irregularity took place, or shall affect the obligation of a witness to state the truth.

Proceedings and evidence not invalidated by omission of oath or irregularity.

14. Every person giving evidence on any subject before any Court or person hereby authorized to administer oaths and affirmations shall be bound to state the truth on such subject.[1]

Persons giving evidence bound to state the truth.

15. [*Amendment of Penal Code, ss. 178 and 181.*] *Rep. by the Repealing Act, 1938 (I of 1938). s. 2 and Sch.*

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[1] *Cf.* the Indian Penal Code (Act 45 of 1860), s. 191.

Official oaths abolished.

16. Subject to the provisions of sections 3 and 5, no person appointed to any office shall, before entering on the execution of the duties of his office, be required to make any oath, or to make or subscribe any affirmation or declaration whatever.

SCHEDULE.

[*Rep. by the Repealing Act, 1873 (XII of 1873).*]

THE NORTH-WESTERN PROVINCES VILLAGE AND ROAD POLICE ACT, 1873.

ACT No. XVI OF 1873.[1]

[*21st November, 1873.*]

An Act to consolidate and amend the law relating to Village and Road Police in the North-Western Provinces.

Preamble.

WHEREAS it is expedient to consolidate and amend the law relating to the village and road police in the North-Western Provinces of the Presidency of Fort William in Bengal; It is hereby enacted as follows :—

I.—Preliminary.

Short title.

1. This Act may be called the North-Western Provinces Village and Road Police Act, 1873 :

Local extent.

[2][This Act extends only to the [3]territories which were on the 21st of November, 1873, under the government of the Lieutenant-Governor of the North-Western Provinces.]

[4]* * * * *

2. [*Repeal of enactments*] *Rep. by the Repealing Act, 1874 (XVI of 1874).*

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[1] For Statement of Objects and Reasons, *see* Gazette of India, 1873, Pt. V, p. 114; for Proceedings in Council, *see ibid.* Supplement, pp. 375, 408; *ibid.* Extra Supplement, dated 26th April, 1873, p. 8; and *ibid.* Supplement, 1873, pp. 1299 and 1319.

This Act has been declared, by notification under the Scheduled Districts Act, 1874 (14 of 1874), to be in force in the Tarai Parganas.

[2] Subs. by the A. O. 1937 for the original paragraph.

[3] Now the State of U. P.

[4] The commencement cl. was rep. by the Repealing Act, 1876 (12 of 1876).

(II.—Appointment of Village Police. III.—Appointment of Road Police. IV.—Duties of Village and Road Police.)

II.—Appointment of Village Police.

Right of nomination of village-policemen.

3. The nomination to the post of village-policeman shall be made by the zamindar of the village, or, where there are more zamindars than one, by the lambardar as their representative; and, where there are more lambardars than one, the opinion of the majority (unless there is some special provision to the contrary in the village-administration paper) shall prevail.

Obligation to nominate.

4. Every person authorized to nominate to the office of village-policeman shall, within fifteen days after the occurrence of a vacancy in such office, nominate a proper person to the vacant post, and communicate the nomination to the Magistrate of the district.

Discretion to appoint or reject nominee.

5. The person so nominated shall, after due enquiry into his age, character and ability, be appointed or rejected [1][by the State Government].

Power to Magistrate to appoint.

6. (*a*) In default of such nomination within the said fifteen days, [2][the State Government] shall appoint such person as [3][it] thinks fit to the vacancy.

Procedure in case of rejection of nominee.

(*b*) If nomination has been made within the said fifteen days, but the nominee is rejected, the person authorized to nominate shall, within fifteen days from the date of such rejection, nominate another person to the vacant post; and in default of such nomination, or if such nomination has been made but the nominee is again rejected, [2][the State Government] shall appoint such person as [3][it] thinks fit to the vacancy.

III.—Appointment of Road Police.

Appointment of road-police.

7. Subject to the rules to be framed under section 14, and for the time being in force, [2][the State Government] may, from time to time, appoint persons to be [4][road-police].

IV.—Duties of Village and Road Police.

Duties of village and road policemen.

8. Every village-policeman and every road-policeman shall perform the following duties :—

(*a*) He shall give immediate information to the officer in charge of the police-station appointed for his village or beat—

(1) of every unnatural, suspicious or sudden death occurring in the village of which he is chaukidar, or within his beat ;

[1] Subs. by the A. O. 1950 for "by the Provincial Government" which had been subs. by the A. O. 1937 for "at discretion by such Magistrate or by some officer authorised by him in that behalf".

[2] Subs. by the A. O. 1950 for "the Provincial Government" which had been subs. by the A. O. 1937 for "the Magistrate of the District".

[3] Subs. by the A. O. 1937 for "he".

[4] Subs. by the A. O. 1937 for "the road police of his district".

(2) of each of the following offences occurring in such village or on such beat (that is to say), murder, culpable homicide, rape, dacoity, theft, robbery, mischief by fire, house-breaking, counterfeiting coin, causing grievous hurt, riot, harbouring a proclaimed offender, exposure of a child, concealment of birth, administering stupefying drugs, kidnapping, lurking house-trespass; and

(3) of all attempts and preparations to commit, and abetments of, any of the said offences.

(*b*) He shall keep the police informed of all disputes which are likely to lead to any riot or serious affray.

(*c*) He shall arrest all proclaimed offenders, and all persons whom he may find in the act of committing any offence specified in paragraph (*a*), clause (*2*), of this section.

(*d*) He shall observe, and from time to time report to the officer in charge of the police-station within the jurisdiction of which his village or beat may be situate, the movements of all bad characters in or on such village or beat.

(*e*) He shall report to the officer in charge of such-police-station the arrival of suspicious characters in the neighbourhood.

(*f*) He shall supply to the best of his ability any local information which a Magistrate or any officer of police may require, and shall promptly execute all orders issued to him by competent authority.

Procedure on arrest by village or road-policeman.

9. Whenever a village-policeman or road-policeman arrests any person, he shall take him, as soon as possible, to the police-station within the jurisdiction of which his village or beat is situate.

V.—Liabilities of Village and Road Police.

Dismissal of village or road-policeman.

10. The Magistrate of the district may dismiss any village-policeman or road-policeman for any misconduct or neglect of duty.

Acts punishable.

11. Every village-policeman and every road-policeman guilty of any wilful misconduct in his office, or of neglect of duty, such misconduct

XLV of 1860 or neglect not being an offence within the meaning of the Indian Penal Code.

or withdrawing from the duties of his office without permission, and without having given at least two months' notice of his intention to withdraw from such duties to the persons authorized to nominate or appoint under sections 3 and 7 (as the case may be),

or offering any unnecessary personal violence to any person in his custody,

or violating any of the rules framed under section 14, and for the time being in force.

shall be liable, on conviction before a Magistrate, to a penalty not exceeding three months' pay, or to imprisonment for a period not exceeding three months or to both. Penalty.

12. All fines levied under this Act on village-policemen or road-policemen shall be credited to such fund as the [1][State Government] from time to time appoints. Fines to be credited to such fund as Government appoints.

VI.—Miscellaneous.

13. All orders of [2][* * * the Magistrate of the district under section [3]* * * 10 shall be subject to control, revision and alteration by the Commissioner to whom he is subordinate. Orders of Magistrate of district subject to control of Commissioner.

14. The [1][State Government] may from time to time frame rules— Power to make subsidiary rules.

(*a*) for the discipline of the village and road police ;

(*b*) for regulating their numbers, location and duties · and

(*c*) for carrying out generally the purposes of this Act.

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[1] Subs. by the A. O. 1950 for "Provincial Govt." which had been subs. by the A. O. 1937 for "L. G ".

[2] The words "and appointments made by" rep. by the North Western Provinces Village and Road Police (Amendment) Act, 1941 (U. P. 14 of 1941), s. 2. U. P. Act 14 of 1941 was made by the Governor in exercise of the powers assumed by him under s. 93 of the G. of I. Act, 1935 and is continued in force by the United Provinces Expiring Laws Continuance Act, 1948 (U.P. Act 13 of 1948), s. 2 & Sch.

[3] The figures and word "5, 6, 7 or" rep. by U.P. Act 14 of 1941, s. 2.

(*I.—Preliminary.*)

THE MARRIED WOMEN'S PROPERTY ACT, 1874.

ACT No. III OF 1874.[1]

[*24th February, 1874.*]

An Act to explain and amend the law relating to certain married women, and for other purposes.

Preamble.

WHEREAS it is expedient to make such provision as hereinafter appears for the enjoyment of wages and earnings by women married before the first day of January, 1866, and for insurances on lives by persons married before or after that day :

And whereas by the Indian Succession Act, 1865,[2] section 4, it is enacted that no person shall by marriage acquire any interest in the property of the person whom he or she marries, nor become incapable of doing any act in respect of his or her own property, which he or she could have done, if unmarried: X of 1865

And whereas by force of the said Act all women to whose marriages it applies are absolute owners of all property vested in, or acquired by, them, and their husbands do not by their marriage acquire any interest in such property, but the said Act does not protect such husbands from liabilities on account of the debts of their wives contracted before marriage, and does not expressly provide for the enforcement of claims by or against such wives:

It is hereby enacted as follows:—

I.—Preliminary.

Short title.

1. This Act may be called the Married Women's Property Act, 1874.

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[1] For the Statement of Objects and Reasons, *see Gazette* of India, 1873, Pt. V, p. 457; for Proceedings in Council, *see ibid.* Extra Supplements, dated 2nd August and 6th September, 1873, respectively, pp. 9 and 12, and *ibid.*, 1874, Supplement, p. 239.

The Act has been declared to be in force in the Sonthal Parganas by the Sonthal Parganas Settlement Regulation (3 of 1872), s. 3.

It has been declared, by notification under s. 3 (*a*) of the Scheduled Districts Act, 1874 (14 of 1874), to be in force in the following Scheduled Districts, namely :—

the Districts of Hazaribagh, Lohardaga and Manbhum, and Pargana Dhalbhum and the Kolhan in the District of Singbhum, *see* Gazette of India, 1881, Pt. I, p. 504. The District of Lohardaga included at this time the Palamau District, which was separated in 1894; Lohardaga is now called the Ranchi District, *see* Calcutta Gazette, 1899, Pt. I, p. 44.

It has been extended by notification under s. 5 of the same Act, to the Scheduled District of the North-Western Provinces Tarai, *see* Gazette of India, 1876, Pt. I, p. 505.

[2] *See* now the Indian Succession Act, 1925 (39 of 1925).

(*I.—Preliminary. II.—Married Women's Wages and Earnings.*)

2. [1][It extends to the whole of India except ~~Part B States~~].

Extent and application.

But nothing herein contained applies to any married woman who at the time of her marriage professed the Hindu, Muhammadan, Buddhist, Sikh or Jaina religion, or whose husband, at the time of such marriage, professed any of those religions.

And the [2][State Government] may from time to time, by order, either retrospectively from the passing of this Act or prospectively, exempt from the operation of all or any of the provisions of this Act the members of any race, sect or tribe, or part of a race, sect or tribe, to whom [3][it] may consider it impossible or inexpedient to apply such provisions.

The [2][State Government] may also revoke any such order, but not so that the revocation shall have any retrospective effect.

All orders and revocations under this section shall be published in the [4][Official Gazette].

[5]* * * * *

3. [*Commencement.*] *Rep by the Repealing Act, 1876 (XII of 1876).*

II.—Married Women's Wages and Earnings.

Married women's earnings to be their separate property.

[6]**4.** The wages and earnings of any married woman acquired or gained by her after the passing of this Act, in any employment, occupation or trade carried on by her and not by her husband,

and also any money or other property so acquired by her through the exercise of any literary, artistic or scientific skill,

and all savings from and investments of such wages, earnings and property,

shall be deemed to be her separate property, and her receipts alone shall be good discharges for such wages, earnings and property.

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[1] Subs. by the A. O. 1950 for the original para. as amended by the A. O. 1937 and the A. O. 1948.

[2] The original words "G. G. in C." have successively been amended by the Devolution Act 1920 (38 of 1920), A. O. 1937 and A. O. 1950 to read as above.

[3] Subs. by the A. O. 1937 for "he".

[4] Subs. by the A. O. 1937 for "local official Gazette" which had been subs. for "Gazette of India" by s. 2 and Sch. I of the Devolution Act, 1920 (38 of 1920).

[5] The last paragraph of s. 2 was rep. by the Indian Succession Act, 1925 (39 of 1925), s. 392 and Sch. IX.

[6] *Cf.* the Married Women's Property Act, 1870 (33 and 34 Vict., c. 93), s. 1, now repealed by the Married Women's Property Act, 1882 (45 and 46 Vict., c. 75).

(*III.—Insurance by Wives and Husbands.*)

III.—Insurance by Wives and Husbands.

Married woman may effect policy of insurance.

[1]**5.** Any married woman may effect a policy of insurance on her own behalf and independently of her husband; and the same and all benefit thereof, if expressed on the face of it to be so effected, shall enure as her separate property, and the contract evidenced by such policy shall be as valid as if made with an unmarried woman.

Insurance by husband for benefit of wife.

[2]**6.** [3][(*1*)] A policy of insurance effected by any married man on his own life, and expressed on the face of it to be for the benefit of his wife, or of his wife and children, or any of them, shall enure and be deemed to be a trust for the benefit of his wife, or of his wife and children, or any of them, according to the interest so expressed, and shall not, so long as any object of the trust remains, be subject to the control of the husband, or to his creditors, or form part of his estate.

When the sum secured by the policy becomes payable, it shall, unless special trustees are duly appointed to receive and hold the same, be paid to the Official Trustee of the [4][Part A State or Part C State] in which the office at which the insurance was effected is situate, and shall be received and held by him upon the trusts expressed in the policy, or such of them as are then existing.

And in reference to such sum he shall stand in the same position in all respects as if he had been duly appointed trustee thereof by a High Court, under Act No. XVII of 1864 [5][*to constitute an Office of Official Trustee*], section 10.

Nothing herein contained shall operate to destroy or impede the right of any creditor to be paid out of the proceeds of any policy of assurance which may have been effected with intent to defraud creditors.

[6][(*2*) Notwithstanding anything contained in section 2, the provisions of sub-section (*1*) shall apply in the case of any policy of insurance such as is referred to therein which is effected by any Hindu, Muhammadan, Sikh or Jain, in Madras after the thirty-first day of December, 1913, or in any other [7][Part A State or Part C State] after the first day of April, 1923:

Provided that nothing herein contained shall affect any right or liability which has accrued or been incurred under any decree of a competent Court passed before the first day of April, 1923.]

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[1] *Cf.* the Married Women's Property Act, 1870 (33 and 34 Vict., c. 93), s. 10, para. 1.

[2] *Cf.* para. 2, *ibid.*

[3] S. 6 was renumbered as sub-section (*1*) of that section by the Married Women's Property (Amendment) Act, 1923 (13 of 1923) s. 2.

[4] Subs. by the A. O. 1950 for "Province" which had been subs. by the A. O. 1937 for "Presidency".

[5] See now the Official Trustees Act, 1913 (2 of 1913).

[6] Ins. by Act 13 of 1923, s. 2.

[7] Subs. by the A. O. 1950 for "Province" which had been subs. by the A. O. 1948 for "part of British India".

(*IV.—Legal Proceedings by and against Married Women. V.—Husband's liability for Wife's debts.*)

IV.—Legal Proceedings by and against Married Women.

Married woman may take legal proceedings.

[1]**7.** A married woman may maintain a suit in her own name for the recovery of property of any description which by force of the said Indian Succession Act, 1865,[2] or of this Act, is her separate property; and she shall have, in her own name, the same remedies, both civil and criminal, against all persons, for the protection and security of such property, as if she were unmarried, and she shall be liable to such suits, processes and orders in respect of such property as she would be liable to if she were unmarried.

X of 1865.

Wife's liability for postnuptial debts.

8. If a married woman (whether married before or after the first day of January, 1866) possesses separate property, and if any person enters into a contract with her with reference to such property, or on the faith that her obligation arising out of such contract will be satisfied out of her separate property, such person shall be entitled to sue her, and, to the extent of her separate property, to recover against her whatever he might have recovered in such suit had she been unmarried at the date of the contract and continued unmarried at the execution of the decree:

[3][Provided that nothing herein contained shall—

(*a*) entitle such person to recover anything by attachment and sale or otherwise out of any property which has been transferred to a woman or for her benefit on condition that she shall have no power during her marriage to transfer or charge the same or her beneficial interest therein, or

(*b*) affect the liability of a husband for debts contracted by this wife's agency expressed or implied]

V.—Husband's liability for Wife's debts.

Husband not liable for wife's antenuptial debts.

[4]**9.** A husband married after the thirty-first day of December, 1865, shall not by reason only of such marriage be liable to the debts of his wife contracted before marriage, but the wife shall be liable to be sued

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[1] *Cf.* the Married Women's Property Act, 1870 (33 and 34 Vict., c. 93), s. 11, rep. by *the* Married Women's Property Act, 1882 (45 and 46 Vict., c. 75).

[2] *See* now the Indian Succession Act, 1925 (39 of 1925).

[3] Subs. by the Transfer of Property (Amendment) Supplementary Act, 1929 (21 of 1929), s. 2. The original proviso read: "Provided that nothing herein contained shall affect the liability of a husband for debts contracted by his wife's agency, express or implied [or render a married woman liable to arrest or to imprisonment in execution of a decree.]" The words in brackets had been rep. by the Debtors Act, 1888 (6 of 1888), s. 9.

[4] *Cf.* the Married Women's Property Act, 1870 (33 and 34 Vict., c. 93), s. 12.

(*V.—Husband's liability for Wife's debts. VI.—Husband's liability for Wife's breach of trust or devastation.*)

for, and shall, to the extent of her separate property, be liable to satisfy such debts as if she had continued unmarried:

Proviso.

Provided that nothing contained in this section shall [1]* * * * invalidate any contract into which a husband may, before the passing of this Act, have entered in consideration of his wife's antenuptial debts.

[2][*VI.—Husband's liability for Wife's breach of trust or devastation.*

Extent of husband's liability for wife's breach of trust or devastation.

10. Where a woman is a trustee, executrix or administratrix, either before or after marriage, her husband shall not, unless he acts or intermeddles in the trust or administration, be liable for any breach of trust committed by her, or for any misapplication, loss or damage to the estate of the deceased caused or made by her, or for any loss to such estate arising from her neglect to get in any part of the property of the deceased.]

THE FOREIGN RECRUITING ACT, 1874

ACT No. IV OF 1874.[3]

[*24th February, 1874.*]

An Act to control recruiting in [4][~~Part A states and Part C states~~] for the service of Foreign States.

Preamble.

WHEREAS it is expedient that the [5][Central Government] should exercise full control over recruiting in [4][~~Part A states and Part C states~~] for the service of Foreign States; It is hereby enacted as follows :—

Short title.

1. This Act may be called the Foreign Recruiting Act, 1874.

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[1] The words "affect any suit instituted before the passing of this Act, nor" rep. by the Amending Act, 1891 (12 of 1891).

[2] Ins. by the Indian Succession (Amendment) Act, 1927 (18 of 1927), s. 3.

[3] For the Statement of Objects and Reasons, *see* Gazette of India, 1874, Pt. V, p. 1; for Proceedings in Council, *see ibid.*, 1873, Supplement, p. 1300; *ibid.*, 1874, Supplement, pp. 12 and 240.

It has been declared, by notification under s. 3 (*a*) of the Scheduled Districts Act, 1874 (14 of 1874), to be in force in the folowing Scheduled Districts, namely:—

the Districts of Hazaribagh, Lohardaga and Manbhum, and Pargana Dhalbhum and the Kolhan in the District of Singhbhum, *see* Gazette of India, 1881, Pt. I, p. 504. The District of Lohardaga included at this time the Palamau District, which was separated in 1894; Lohardaga is now called the Ranchi District, *see* Calcutta Gazette, 1899, Pt. I, p. 44.

It has been extended, by notification under s. 5 of the same Act, to the Scheduled District of the North-Western Provinces Tarai, *see* Gazette of India, 1876, Pt. I, p. 505.

The Foreign Enlistment Act, 1870 (33 and 34 Vict., c. 90), applies only when the recruiting is for the service of any foreign State *at war* with any foreign State at peace with Her Majesty.

[4] Subs. by the A. O. 1950 for "the Provinces" which had been subs. by the A. O. 1948 for "British India".

[5] Subs. by the A. O. 1948 for "G.G. in C.".

It extends to [1][the whole of India ~~[except Part B States]~~]. Local extent.

[2]* * * *

2. In this Act— "Foreign State" defined.

"Foreign State" includes any person or persons exercising or assuming to exercise the powers of Government in or over any country, colony, province or people beyond the limits of [3][India].

3. If any person is, within the limits of [3][Part A States and Part C States], obtaining or attempting to obtain recruits for the service of any Foreign State in any capacity, the [4][Central Government] may, by order in writing [5]* * *, either prohibit such person from so doing, or permit him to do so subject to any conditions which the [4][Central Government] thinks fit to impose. Power to prohibit or permit recruiting.

4. The [4][Central Government] may from time to time, by general order notified in the [6][Official Gazette], either prohibit recruiting for the service of any Foreign State, or impose upon such recruiting any conditions which [7][it] thinks fit. Power to impose conditions.

5. The [4][Central Government] may rescind or vary any order made under this Act in such manner as [7][it] thinks fit. Power to rescind or vary orders.

6. Whoever, in violation of the prohibition of the [4][Central Government], or of any condition subject to which permission to recruit may have been accorded,— Offences.

(*a*) induces or attempts to induce any person to accept or agree to accept or to proceed to any place with a view to obtaining any commission or employment in the service of any Foreign State, or

(*b*) knowingly aids in the engagement of any person so induced, by forwarding or conveying him or by advancing money or in any other way whatever,

shall be liable imprisonment for a term which may extend to seven years, or to fine to such amount as the Court thinks fit, or to both.

7. Any offence against this Act may be inquired into and tried, as well in any district in which the person accused may be found, as in any district in which it might be enquired into and tried under the provisions of the Code of Criminal Procedure.[8] Place of trial.

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[1] Subs. by the A. O. 1950 for "all the Provinces of India" which had been subs. by the A. O. 1948 for "the whole of British India".

[2] The commencement cl. was rep. by the Repealing Act, 1876 (12 of 1876).

[3] Subs. by the A. O. 1950 for "the Provinces" which had been subs. by the A. O. 1948 for "British India".

[4] Subs. by the A. O. 1937 for "G. G. in C.".

[5] The words "signed by a Secretary to the G. of I." rep. by the A. O. 1937.

[6] Subs. by the A. O. 1937 for "Gazette of India".

[7] Subs. by the A. O. 1937 for "he".

[8] See now the Code of Criminal Procedure, 1898 (Act 5 of 1898).

THE LAWS LOCAL EXTENT ACT, 1874.

CONTENTS.

PREAMBLE.

SECTIONS.

1. Short title.
2. Interpretation-clause.
3. Local extent of Acts in first schedule.
4. Local extent of enactments in second schedule.
5. Local extent of enactments in third schedule.
6. Local extent of enactments in fourth schedule.
7. Local extent of enactments in fifth schedule.
8. Savings.
9. [*Repealed.*]

SCHEDULES.

FIRST SCHEDULE.

Enactments in force in the whole of India except Part B States and the Scheduled Districts.

SECOND SCHEDULE.

Enactments in force throughout the whole of the territories subject to the Government of the Governor of Fort St. George in Council, except the Scheduled Districts.

THIRD SCHEDULE.

Enactments in force throughout the whole of the territories subject to the Government of the Governor of Bombay in Council, except the Scheduled Districts.

FOURTH SCHEDULE.

Enactments in force throughout the whole of the territories subject to the Government of the Lieutenant-Governor of Bengal, except the Scheduled Districts.

FIFTH SCHEDULE.

Enactments in force throughout the whole of the territories subject to the Government of the Lieutenant-Governor of the North-Western Provinces, except the Scheduled Districts.

SIXTH SCHEDULE.

PART I.—Scheduled Districts, Madras.
" II.—Scheduled Districts, Bombay.
" III.—Scheduled Districts, Bengal.
" IV.—Scheduled Districts, North-Western Provinces.
" V.—Scheduled Districts, Punjab.
" VI.—Scheduled Districts, Central Provinces.
" VII.—The Chief Commissionership of Coorg.

Part VIII.—The Chief Commissionership of the Andaman and Nicobar Islands.

„ IX.—The Chief Commissionership of Ajmer and Merwara.

„ X.—The Chief Commissionership of Assam.

„ XI.—[*Repealed.*]

„ XII.—[*Repealed.*]

„ XIII.—[*Repealed.*]

SEVENTH SCHEDULE.

[*Repealed.*]

ACT No. XV OF 1874.[1]

[*8th December, 1874.*]

An Act for declaring the local extent of certain Enactments, and for other purposes.

Preamble.

WHEREAS it is expedient to declare the local extent of certain Acts passed by the Governor General of India in Council, the Legislative Council of India, and the Council of the Governor General of India assembled for the purpose of making Laws and Regulations ;

And whereas it is also expedient to consolidate the laws relating to the local extent of certain Acts and Regulations in the Presidencies of Fort St. George and Bombay, and in the Lower and the North-Western Provinces of the Presidency of Fort William in Bengal ;

It is hereby declared and enacted as follows :—

Short title.

1. This Act may be called the Laws Local Extent Act, 1874.

Interpretation clause.

2. In this Act the expression "Scheduled Districts" means the territories mentioned in the sixth schedule hereto annexed.

Local extent of Acts in first schedule.

3. The Acts mentioned in the first schedule hereto annexed are now in force [2][in the whole of India except Part B States and] the Scheduled Districts.

Local extent of enactments in second schedule.

4. The enactments mentioned in the second schedule hereto annexed are now in force throughout the whole of the territories now subject to the government of the Governor of Fort St. George in Council, except the Scheduled Districts subject to such government.

Local extent of enactment in third schedule.

5. The enactments mentioned in the third schedule hereto annexed are now in force throughout the whole of the territories now subject to the government of the Governor of Bombay in Council, except the Scheduled Districts subject to such government.

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[1] For the Statement of Objects and Reasons, *see* Gazette of India, 1870, Pt. V, p. 153; and for Proceedings in Council, *see ibid.*, 1871, Supplement, pp. 1074 and 1218; and *ibid.*, 1874, Supplement, pp. 1885 and 1976.

This Act has been repealed, so far as it relates to any enactment replaced by the Guardians and Wards Act, 1890 (8 of 1890), as on the 1st July 1890, in certain partially excluded areas in the Madras Province: *See* Madras Reg. 6 of 1940.

[2] Subs. by the A. O. 1950 for "throughout all the Provinces of India, except", the words "all the Provinces of India" being subs. by the A. O. 1948 for "the whole of British India."

Local extent of enactments in fourth schedule.

6. The enactments mentioned in the fourth schedule hereto annexed are now in force throughout the whole of the territories now subject to the government of the Lieutenant-Governor of Bengal, except the Scheduled Districts subject to such government.

Local extent of enactments in fifth schedule.

7. The enactments mentioned in the fifth schedule hereto annexed are now in force throughout the whole of the territories now subject to the government of the Lieutenant-Governor of the North-Western Provinces of the Presidency of Fort William, except the Scheduled Districts subject to such government

Savings.

8. Nothing herein contained shall—

(*a*) bar the power of the [1][Central Government] or the [2][State Government] under any law for the time being in force, to extend to any place any Act mentioned in the said first schedule ;

(*b*) extend any Act empowering the [2][State Government] to extend the same or any part thereof, or affect in any manner the exercise of such power ;

(*c*) affect the operation of any Act or Regulation heretofore extended to or declared to be in force in any of the Scheduled Districts ;

(*d*) revive any enactment which has been repealed either generally or with reference to some special subject ;

[3]* * * * *

* * * * *

(*j*) extend to any of the Towns of Calcutta, Madras and Bombay any law not now in force therein ;

[4][(*jj*) extend to Pargana Bhadohi or Pargana Kera Mangror in the Mirzapur District, or to Pargana Kaswa Raja in the Benares District, any law not now in force therein] ;

(*k*) affect the operation of any enactment not mentioned in any of the schedules hereto annexed.

9. [*Enactments repealed*] *Rep by the Repealing Act, 1876 (XII of 1876).*

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[1] Subs. by the A. O. 1937 for "G. G. in C."

[2] Subs. by the A. O. 1950 for "Provincial Govt." which had been subs. by the A. O. 1937 for "L. G.".

[3] Cls. (*e*) and (*h*) were rep. by Act 8 of 1887, cl. (*f*) by the Amending Act, 1891 (12 of 1891), cl. (*g*) by the Guardians and Wards Act, 1890 (8 of 1890) and cl. (*i*) by the Repealing and Amending Act, 1894 (4 of 1894).

[4] Ins. by the Benares Family Domains Act, 1881 (14 of 1881), s. 15.

FIRST SCHEDULE.[1]

(See section 3.)

ACTS OF THE SUPREME COUNCIL.

Year and Number.	Subject.
1837, IV	Power to acquire land.
[2]1838, XXV	Wills executed before the 1st January 1866
1839, XXIX	Dower, when marriage was contracted before 1st January 1866.
[2]1839, XXX	Inheritance, where descent took place before 1st January 1866.
1839, XXXII	Interest.
1841, X	Registration of ships.
1943, V	Slavery.
[3]1850, V	*Coasting Trade.*
1850, XI	Navigation Laws.

[1] Act 15 of 1874 having been rep. so far as it relates to the following enactments, by the Acts noted against each, the references to those enactments have been omitted from this schedule :—

Enactments omitted.	Repealing Acts.
Act 26 of 1836	Act 12 of 1927.
„ 6 of 1840	„ 26 of 1881.
„ 11 of 1841	„ 8 of 1887.
„ 18 of 1841	„ 11 of 1878.
„ 19 of 1841	„ 12 of 1927.
„ 9 of 1842	„ 12 of 1891.
„ 12 of 1842	„ 8 of 1887.
„ 20 of 1847	„ 12 of 1927.
„ 34 of 1850	The A. O.
„ 30 of 1852	Act 12 of 1927.
„ 33 of 1852	„ 8 of 1887.
„ 18 of 1854	„ 12 of 1891.
„ 3 of 1858	The A. O.
„ 1 of 1859	Act 21 of 1923.
„ 3 of 1859	„ 8 of 1887.
„ 8 of 1859	„ 12 of 1891
„ 14 of 1859, s. 15	
„ 15 of 1859	
„ 27 of 1860	„ 7 of 1889.
„ 9 of 1861	„ 8 of 1890
„ 23 of 1861	„ 12 of 1893
„ 6 of 1863	
„ 6 of 1864	„ 12 of 1927.
„ 11 of 1865	„ 9 of 1887.
„ 21 of 1865	„ 12 of 1927.
„ 5 of 1866	
„ 10 of 1866	„ 12 of 1891
„ 10 of 1867	„ 9 of 1887.
„ 10 of 1868	„ 12 of 1891.
„ 15 of 1869	„ 12 of 1927.
„ 1 of 1870	

[2]Spent

[3]Rep. by Act 34 of 1939

Year and Number.		Subject.
[1] 1850,	XII	Default of Public Accountants.
„	XVIII	Protection of Judicial Officers.
„	XIX	Binding of Apprentices.
„	XXI	Non-forfeiture of rights by loss of Caste.
„	XXXVII	Inquiries into the behaviour of Public Servants.
1853,	II	Burdens on land.
1854,	XXXI	Barring entails: Conveyances by married women.
1855,	XI	Mesne profits and improvements.
„	XII	Executors and Administrators.
„	XIII	Compensation for loss occasioned by death caused by actionable wrong.
„	XXIII	Administration of mortgaged estates in cases of descents occurring or devises made before the 1st January 1866.
„	XXIV	Penal servitude.
„	XXVIII	Interest.
1856,	IX	Bills of Lading.
„	XI	Desertion by European Soldiers.
„	XV	Marriage of Hindu Widows.
[2] *1857,*	*XI*	*Offences against the State.*
[2] „	*XXV*	*Forfeiture by Mutineers.*
[3] *1858,*	*XXXV*	*Estates of Lunatics not subject to jurisdiction of Supreme Courts.*
[3] „	XXXVI	*Lunatic Asylums.*
1859,	IX	Sections 16, 17, 18 and 20—Forfeitures.
1860,	XXI	Registration of Societies.
1862,	III	Government Seal.
1863,	XVI	Excise Duty payable on Spirits used in Arts and Manufactures.
[4] *1863,*	*XXIII*	*Claims to waste-lands.*
[5] *1863,*	*XXXI*	*Gazette of India.*
[6] *1864,*	*III*	*Foreigners.*
1865,	III	Common Carriers.
[7] *1865,*	*XV*	*Marriage and Divorce among Parsees.*

[1] Rep. in Assam by Regulation 1 of 1886.
[2] Rep. by Act 4 of 1922.
[3] Rep. by Act 4 of 1912.
[4] Rep. in Bombay by Bombay Act 9 of 1943.
[5] Rep. by Act 1 of 1938.
[6] Rep. by Act 31 of 1946.
[7] Rep. by Act 3 of 1936.

Year and Number.		Subject
1866,	XXI	Dissolution of Marriages of Native Converts
„	XXVIII	Trustees and Mortgagees' Powers.
1867,	XXV	Printing Presses, etc.

SECOND SCHEDULE [1]

(See section 4.)

(*a*).—MADRAS REGULATIONS.

Year and Number		Subject
1802,	III (s. 1, part of s. 16 only)	Procedure of Civil Courts.
„	XIX (s. 2) . . .	Covenanted Civil Servants forbidden to lend.
„	XXV	Settlement of Land-revenue.
„	XXVI (ss. 1, 2 and 3 only)	Registration of malguzari land.
[2] „	XXIX	Karnams.
1803,	I	Board of Revenue.
„	II	Conduct of Collectors, etc.

[1] Act 15 of 1874 having been rep. so far as it relates to the following enactments, by the Acts noted against each, the references to those enactments have been omitted from the schedule :—

Enactments omitted.	Repealing Acts.
Mad. Reg. 3 of 1802, s. 11	Act 12 of 1891.
„ „ 5 of 1802, s. 30	„ 11 of 1901.
„ „ 13 of 1802	Do.
„ „ 1 of 1805	„ 12 of 1891.
„ „ 2 of 1807	
„ „ 4 of 1816	
„ „ 9 of 1816, s. 43	
„ „ 14 of 1816	
„ „ 5 of 1816	„ 12 of 1927.
„ „ 1 of 1819	„ 12 of 1876.
„ „ 2 of 1819	The A. O.
„ „ 4 of 1821, s. 4	Act 12 of 1876.
„ „ 3 of 1831	
„ „ 7 of 1832	
„ „ 11 of 1832	„ 6 of 1878.
„ „ 14 of 1832	„ 13 of 1889

[2] This Regulation has been rep. locally by Madras Act 2 of 1894.

Year and Number.		Subject.
[1] 1804,	V	Court of Wards.
1806,	II [2] [(s. 7, cl. second)]	Collectors and Karnams.
[3] *1808,*	*VII*	*Martial Law.*
1816,	XI	Sections 8, 9, 10—Heads of villages: Section 11, cl. 1—Stolen property: Section 13—Discovery of corpses. Section 14—Register of persons confined by heads of villages; and section 47—Magistrates charged with maintenance of peace.
..	XII	Reference of claims regarding land and produce to Village and District Panchayats.
1817,	VII	Maintenance of Bridges, etc.; Escheats.
..	VIII (s. 9 only) . .	Sale for arrears of revenue of estate belonging to Native Officer or Soldier.
1822,	IV	Explanation of Madras Regulation XXV, 1802.
..	*VII (cl. 1 of s. 3 only)* .	*Native Officers in Revenue and other Public Departments.*
..	IX . . .	Embezzlement by public servants and malversation in revenue-matters.
1823,	III . . .	
1828,	VII	Powers of Subordinate and Assistant Collectors.
1829,	V	Hindu Wills and Estates.
1830,	I	Prohibition of Widow-burning.
1831,	V (s. 7, cl. 2 only) .	Liability of Ministerial Officers for reception of improperly stamped document.
[6] ,,	VI	Hereditary Village Offices.
[7] ..	X	Prohibition of Sale of Estates of Minors for Arrears of Revenue.
1832	III	Limitation for Suits against orders of Revenue Authorities under Madras Regulation VII of 1828.

[1] Act 15 of 1874, so far as it relates to the portions of Madras Regulation 5 of 1804 which were rep. by the Guardians and Wards Act, 1890 (8 of 1890), is rep. by the latter Act. The Regulation was rep. by the Madras Court of Wards Act, 1902, (Mad. I of 1902).

[2] Parts of ss. 1 and 7 were originally referred to in this schedule. Of the entire Regulation only the second clause of s. 7 is now in force, see Pt. III of the Schedule to the Repealing Act, 1876 (12 of 1876).

[3] Rep. by s. 3 and Sch. of Act 4 of 1922.

[4] Madras Regulation 12 of 1816 has been rep. by the Madras Survey and Boundaries Act, 1897 (Mad. 4 of 1897) so far as it applies to cases of claims to lands or crops, the validity of which claims may depend upon the determination of an uncertain and disputed boundary or land-mark.

[5] Rep. by the A. O. 1937.

[6] Rep. by the Madras Hereditary Village Offices Act, 1895 (Mad. 3 of 1895).

[7] Act 15 of 1874, so far as it relates to Madras Regulation 10 of 1831, s. 3, is rep. by the Guardians and Wards Act, 1890 (8 of 1890).

(*b*)—ACTS OF THE SUPREME COUNCIL RELATING TO THE MADRAS PRESIDENCY [1]

Year and Number		Subject
1837,	XXXVI	Criminal Jurisdiction of Collectors
1839,	VII	Tahsildars
[2] *1840,*	*VIII*	*Awards of Panchayats*
[3] *1846*	*I*	*Pleaders*
1849,	X	Commissioners of Revenue
[3] *1853,*	*XX*	Pleaders
1857,	VII	Uncovenated Agency
1858,	I	Compulsory Labour
1859,	XXIV	Police

[1] Act 15 of 1874 having been rep so far as it relates to the following enactments, by the Acts noted against each, the references to those enactments have been omitted from this schedule —

Enactments omitted	Repealing Acts
Act 12 of 1838	Act 6 of 1878
„ 17 of 1840, „ 7 of 1852	„ 12 of 1891
„ 6 of 1844	„ 3 of 1937
„ 9 of 1846	„ 12 of 1927
„ 10 of 1855, s 10	„ 11 of 1901
„ 14 of 1855	„ 8 of 1887
„ 21 of 1855, „ 8 of 1856	„ 12 of 1927
„ 14 of 1858	„ 8 of 1890
„ 28 of 1860	„ 12 of 1927
„ 11 of 1869	„ 12 of 1891
„ 24 of 1869	„ 18 of 1877

[2] Rep by Mad Act 7 of 1931

[3] As to the repeal of Acts 1 of 1846 and 20 of 1853 in the Madras Presidency, *see* the Legal Practitioners Act, 1879 (18 of 1879), ss 1 and 42

THIRD SCHEDULE.[1]

(*See section 5.*)

(*a*)—BOMBAY REGULATIONS.

Year and Number.		Subject.
1827.	II	Section 21 (caste questions);[2] * * *
[2] „	IV	Section 26 (law applicable to suits): section 69, clauses *second* and *third* (attachment and distraint of crops).
„	V	Preamble : Section 9 (acknowledgments of debt): section 14 (interest): section 15 (mortgages and pledges).
„	VIII	Administration of Estates.
„	XII	Section 19 (Magistrate's power to make rules): section 20 (standards of weights and measures): section 27, clause 2 (supervision of suspected persons) : section 37, clauses *first* and *second* (responsibility of villages for robberies).
„	XIII	Section 34, clause *third* (letter substituted for summons).
„	XXII	Sections 40, 41, 42, 43 (passage of troops).
[3]1830,	V	Section 1 (Revenue Commissioners): section 2, clauses, 1, 2, 3 (Collectors and Sub-Collectors).
„	XIII	Civil jurisdiction of Jagirdars.
[3] 1831,	XV	Village Patels.
[3] 1832,	II	Realization of Revenue.
[3] 1833,	V	Hereditary Officers.

[1] Act 15 of 1874 having been rep. so far as it relates to the following enactments by the Acts noted against each, the references to those enactments have been omitted from the schedule :—

Enactments omitted.	Repealing Acts.
Bom. Reg. 12 of 1827, preamble	Act 12 of 1891.
„ „ 16 of 1827	Act 12 of 1891.
„ „ 21 of 1827, ss. 1-16, 46, 54-73	Act 12 of 1891.
„ „ 22 of 1827, ss. 18-20, 45-47	„ 13 of 1889.
„ „ 25 of 1827	The A. O.

[2] Certain words rep. by Act 12 of 1927.

[3] Bom. Reg. 4 of 1827, s. 69, and Bom. Regs. 5 of 1830, 15 of 1831, 2 of 1832 and 5 of 1833 rep. locally by Bom. Act 5 of 1879.

(*b*)—ACTS OF THE SUPREME COUNCIL RELATING TO THE BOMBAY PRESIDENCY.[1]

Year and Number.		Subject.
1838,	XVI	Judiciary.
[2] „	XVIII	Sureties.
1838,	XIX	Coasting Vessels.
1839,	XX	Revenue.
1840,	XV	Agents of Foreign Sovereigns.
[2] 1842,	XIII	Revenue.
[2] „	XVII	Revenue Commissioners.
1844,	XIX	Abolition of Town Duties.
[3] 1846,	I	Pleaders.
[2] „	III	Sections 1, 5 and 6—Boundary Marks.
[3] 1853	XX	Pleaders.

[1] Act 15 of 1874 having been rep. so far as it relates to the following enactments, by the Acts noted against each, the references to those enactments have been omitted from this schedule :—

Enactments omitted.	Repealing Acts.
Act 11 of 1843	Act 12 of 1891.
„ 3 of 1852	
„ 21 of 1852	
„ 10 of 1855, s. 10	„ 11 of 1901.
„ 8 of 1856	„ 9 of 1894.
„ 20 of 1864	„ 8 of 1890.

[2] Acts 18 of 1838, 13 and 17 of 1842 and 3 of 1846 rep. locally by the Bombay Land-revenue Code, 1879 (Bom. 5 of 1879). Act 18 of 1838 rep. by Act 32 of 1940.

[3] As to the repeal of Acts 1 of 1846 and 20 of 1853 in the Bombay Presidency, see the Legal Practitioners Act, 1879 (18 of 1879), ss. 1 and 42.

FOURTH SCHEDULE.[1]

(See Section 6.)

(*a*).—BENGAL REGULATIONS (LOWER PROVINCES).

Year and Number.		Subject.
1793,	I	Perpetual Settlement.
,,	II	Collection of land-revenue.
,,	VIII	Rules for Decennial Settlement.
,,	XI	Native laws of inheritance to Revenue-paying land.
,,	XIX	Title to lands exempt from Revenue.
,,	XXXVII	Title to lands exempt from Revenue under badshahi grants.
,,	XXXVIII	Section I—Preamble : Section 2—Prohibition of loans by Covenanted Servants.
1794,	III	Sections 13, 16, 17, 18, 19 and 20—Arrears of Revenue.
1799,	V	Wills and Intestacies of Natives.
1800,	VIII	Pargana Register of Lands.
1801	I	Arrears of Revenue : Division of Joint Estates.
[2]*1804,*	X	*Punishment by Courts-martial of certain State offences.*
1806,	XI	Passage of Troops.
1810,	XIX	Maintenance of Bridges, etc.; Escheats.

[1] Act 15 of 1874 having been rep. so far as it relates to the following enactments, by the Acts noted against each, the references to those enactments have been omitted from this schedule :—

Enactments omitted.	Repealing Acts.
Ben. Reg. 48 of 1793	Act 12 of 1891.
,, ,, 3 of 1794, s. 12	
,, ,, 58 of 1795, ss. 3 & 4	,, 12 of 1876.
,, ,, 15 of 1797	,, 12 of 1891.
,, ,, 1 of 1798	
,, ,, 17 of 1806, ss. 7 & 8	
,, ,, 20 of 1810	,, 13 of 1889.
,, ,, 11 of 1811	,, 12 of 1891.
,, ,, 19 of 1814	
,, ,, 5 of 1817	,, 6 of 1878.
,, ,, 20 of 1817, ss. 28 & 32	,, 12 of 1891
,, ,, 3 of 1818	The A. O.
,, ,, 6 of 1819	Act 12 of 1891.
,, ,, 20 of 1825	,, 10 of 1882.
,, ,, 4 of 1829	,, 12 of 1876.

[2] Rep. by the Special Laws Repeal Act, 1922 (4 of 1922), s. 3 and Sch.

Year and Number.		Subject.
1812,	V	Collection of Land-revenue.
„	XI	Removal of Foreign Emigrants.
1817,	XX	Section 29—Criminal process in Salt and Opium Departments : Section 30, clauses 1, 2 and 5—Building forts ; Collecting sepoys and stores ; Encroaching on roads.
1819,	II	Resumption of Revenue-free lands.
1821,	IV	Powers of Collectors and Magistrates.
[1] *1822,*	*III*	*Boards of Land-revenue.*
„	XI	Section 36—Khas management of purchases by Government : Section 38—non-liability of Government for errors of Courts.
1823,	VI	Indigo Contracts.
„	VII	Prohibition of loans to Covenanted Civil Servants.
1825,	VI	Passage of Troops.
„	IX	Defaulting Malguzars.
„	XI	Alluvion and diluvion.
„	XIII	Settlement of resumed Lakhiraj land.
„	XIV	Authority to confirm Lakhiraj tenures; Native grants.
1827,	III	Section 5—Evidence.
„	V	Management of Estates under attachment.
1828,	III	Appeals from decisions of Revenue Authorities.
„	IV	Section 1 and section 2, clause 4—Time during which Collectors are to be considered engaged in making settlements.
1829,	I	Commissioners of Revenue and Board of Revenue.
„	XVII	Widow-burning.
1830,	V	Sections 1 and 5—Indigo Contracts.

[1] Rep. by the Ben. Board of Revenue Act, 1913 (Ben. 2 of 1913).

(*b*).—ACTS OF THE SUPREME COUNCIL RELATING TO THE LOWER PROVINCES.[1]

Year and Number.		Subject.
1836,	X	Indigo Contracts.
„	XXI	Creating Zilas.
1841,	XII	Section 2—No Interest on arrears of Land-revenue.
1847,	IX	Assessment of new lands.
1848,	XX	Land-revenue.
[2] *1850,*	*XLIV*	*Board of Revenue.*
[3]1855,	XXXII	Embankments.
1856,	XII	Civil Court Amins,
1857,	XIII	Opium.
1858,	XXXI	Settlement of Alluvion.
1859	XI	Sales for Arrears of Revenue.

[1] Act 15 of 1874 having been rep so far as it relates to the following enactments, by the Acts noted against each, the references to those enactments have been omitted from this schedule :—

Enactments omitted.	Repealing Acts.
Act 20 of 1836	Act 12 of 1891.
„ 11 of 1838	
„ 19 of 1853, s. 26	„ 1 of 1903.
„ 20 of 1856	„ 12 of 1891.
„ 21 of 1856	
„ 40 of 1858	„ 8 of 1890.
„ 23 of 1860	„ 12 of 1891.

[2] Rep. by the Ben. Board of Revenue Act, 1913 (Ben. 2 of 1913).

[3] Act 32 of 1855 has been rep. locally in Bengal by the Bengal Embankments Ac. 1873 (Ben. 6 of 1873).

FIFTH SCHEDULE.

(See Section 7.)

(a).—BENGAL REGULATIONS (NORTH-WESTERN PROVINCES).[1]

Year and Number.		Subject.
1793,	XXXVIII	Section 1—Preamble : Section 2—prohibition of loans by Covenanted Servants.
1799,	V	Wills and Administration to Natives
[2] *1804,*	*X*	*Punishment by Courts-martial of certain State Offences.*
1806,	XI	Passage of Troops.
1812,	XI	Removal of Foreign Emigrants.
1822,	XI	Section 38—Non-liability of Government for errors of Courts.
1823,	VI	Indigo Contracts.
„	VII	Prohibition of loans to Covenanted Civil Servants.
1825,	VI	Passage of Troops.
„	XI	Alluvion and Diluvion.
1827,	III	Section 5—Evidence.
„	V	Management of Estates under Attachment.
1829,	XVII	Widow-burning.
1830,	V	Sections 1 and 5—Indigo Contracts.
1831,	XI	Sections 1, 2. 5, 6—Police-powers of Tahsildars.
1833,	IX	Deputy Collectors.

[1] Act 15 of 1874 having been rep. so far as it relates to the following enactments, by the Acts noted against each, the references to those enactments have been omitted from this schedule :—

Enactments omitted.	Repealing Acts.
Ben. Reg. 1 of 1798	Act 12 of 1891.
„ „ 17 of 1806, ss. 7 & 8	Act 12 of 1891.
„ „ 19 of 1810	Act 12 of 1891.
„ „ 20 of 1810	„ 13 of 1889.
„ „ 5 of 1817	„ 12 of 1891.
„ „ 3 of 1818	The A. O.
„ „ 6 of 1819	Act 12 of 1891.
„ „ 20 of 1825	„ 10 of 1882.
„ „ 6 of 1831, s. 6	„ 12 of 1891.
„ „ 11 of 1831, ss. 4 & 8	„ 12 of 1891.
„ „ 1 of 1833	„ 8 of 1875.

[2] Rep. by the Special Laws Repeal Act, 1922 (4 of 1922), s. 3 and Sch.

(*b*).—ACTS OF THE SUPREME COUNCIL RELATING TO THE NORTH WESTERN PROVINCES.[1]

Year and Number.		Subject.
1836,	X	Indigo Contracts.
1854,	XVI	Police.
1856,	XII	Civil Court Amins.
[2] „	*XX*	*Chaukidars.*
1857,	XIII	Opium.

SIXTH SCHEDULE.

(*See Sections 2, 3, 4, 5, 6 and 7.*)

PART I.

SCHEDULED DISTRICTS, MADRAS.

I.—In Ganjam.

(1) The Gumsur Maliahs, including Chokapad.
(2) The Surada Maliahs.
(3) The Chinna Kimedi Maliahs.
(4) The Pedda Kimedi Maliahs.
(5) The Bodaguda Maliahs.
(6) The Surangi Maliahs.
(7) The Parla Kimedi Maliahs.
(8) The Muttas of Korada and Ronaba (otherwise called Srikarma).

[3]* * * * *

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[1] Act 15 of 1874 having been rep. so far as it relates to the following enactments, by the Acts noted against each, the references to those enactments have been omitted from this schedule :—

Enactments omitted.	Repealing Acts.
Act 21 of 1836 . . . . . „ 19 of 1853, s. 26	Act 1 of 1903.
„ 40 of 1858	„ 8 of 1890.

[2] Act 20 of 1856 has been rep. in the U P. by the U. P. Town Areas Act, 1914 (U. P. 2 of 1914), s. 41.

[3] Item (9), "The Chighatti Maliah", was rep. by the Amending Act, 1891 (12 of 1891).

(10) The Jurada Maliah.
(11) The Jalantra Maliah.
(12) The Mandasa Maliah.
(13) The Budarashinghi Maliah.
(14) The Kuttingia Maliah.

II.—In Vizagapatam.

(1) The Jeypur Zamindari.
(2) Golconda Hills, west of the River Boderu
(3) The Madugol Maliahs.
(4) The Kasipur Zamindari.
(5) The Panchipenta Maliahs.
(6) Mondemkolla, in the Merangi Zamindari
[1][(7) The Konda Mutta of Merangi.]
(8) The Gumma and Konda Muttas of Kurpam.
(9) the Kottam, Ram and Konda Muttas of Palkonda.

III.—In the Godavari District.[2]

(1) The Bhadrachalam Taluq.
(2) The Rakapilli Taluq.
(3) The Rampa Country.

IV.—In the Indian Ocean.

The Laccadive Islands, including Minicoy.

PART II.

SCHEDULED DISTRICTS, BOMBAY.

I.—The Province of Sindh[3].

[4]* * * * *

[1] Subs. by the Amending Act, 1891 (12 of 1891) for "(7) The Konda Mutta of Belgam."

[2] The Ducharti and Guditeru Muttas in the Golconda Hills have been transferred from the Vizagapatam to the Godavari District. *See* Fort St. George Gazette, 1881, Pt. I, p. 336.

Certain villages and estates in the Godavari District became Scheduled Districts for the purposes of the Scheduled Districts Act, 1874 (14 of 1874); but they are not "scheduled districts" within the meaning of the Laws Local Extent Act, 1874.

[3] Ceased to be part of India from 15th August, 1947.

[4] Item II, "The Panch Mahals", was rep. by the Panch Mahals Laws Act, 1885 (7 of 1885), with effect from the 1st May 1895.

III.—Aden[1]

IV.—The villages belonging to the following Mehwassi Chiefs :—

(1) The Parvi of Kathi.

(2) The Parvi of Nal.

(3) The Parvi of Singpur.

(4) Walwi of Gaohalli.

(5) The Wassawa of Chikhli.

(6) The Parvi of Nawalpur.

PART III.

SCHEDULED DISTRICTS, BENGAL.

I.—The Jalpaiguri and Darjeeling [2][Districts].

II.—The Hill Tracts of Chittagong[3].

III.—The Santhal Parganas.

IV.—The Chutia Nagpur Division[4].

V.—The Mahals of Angul and Banki.[5]

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[1] Aden ceased to be part of India from 1st April, 1937.

[2] Subs. by the Amending Act, 1891 (12 of 1891), for "Divisions".

[3] Ceased to be part of India from 15th August, 1947.

[4] The Thanas of Raipur and Khattra, which formerly formed portion of the Chutia Nagpur Division, were transferred to the District of Bankura, and ceased to be a Scheduled District on the 1st October 1879. *See* the Raipur and Khattra Laws Act, 1879 (19 of 1879).

The ESTATE OF PORAHAT now forms part of the Chutia Nagpur Division Scheduled District for the purposes of the Scheduled Districts Act, 1874, *see* the Porahat Estate Act, 1893 (2 of 1893), s. 3, but it is not a "scheduled district" within the meaning of the Laws Local Extent Act, 1874.

[5] The Mahal of Banki ceased to be a Scheduled District on the 1st April, 1882, *see* the Banki Laws Act, 1881 (25 of 1881).

The KHONDMALS in Orissa, which previously formed part of the Angul District [*see* the Angul Laws Regulation, 1913 (3 of 1913)] and now form an independent District [*see* the Khondmals Laws Regulation, 1936 (4 of 1936] became a Scheduled District for the purposes of the Scheduled Districts Act, 1874 (14 of 1874); but they are not "scheduled districts" within the meaning of the Laws Local Extent Act, 1874.

PART IV.

SCHEDULED DISTRICTS, NORTH-WESTERN PROVINCES.

[1]* * * * *

II.—The Province of Kumaon and Garhwal.

III.—The Tarai Parganas, comprising—Bazpur, Kashipur, Jaspur, Rudarpur, Gadarpur, Kilpuri, Nanak-Mattha and Bilheri.

IV.—In the Mirzapur District—

(1) The tappas of Agori Khas and South Kon in the Pargana of Agori.

(2) The tappa of British Singrauli in the Pargana of Singrauli.

(3) The tappas of Phulwa, Dudhi and Barha in the Pargana of Bichipar.

(4) The portion lying to the South of the Kaimor Range.

[2]* * * * *

VI.—The tract of country known as Jaunsar Bawar in the Dehra Dun District.

PART V.

SCHEDULED DISTRICTS, PUNJAB.

The Districts[3] of Hazara, Peshawar, Kohat, Bannu, Dera Ismail Khan, Dera Ghazi Khan, Lahaul and Spiti.

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[1] Item I, "The Jhansi Division, comprising the Districts of Jhansi, Jalaun and Lalatpur", was rep. by the North-Western Provinces and Oudh Act, 1890 (20 of 1890), s. 8 (*1*).

[2] Item V, "The Family Domains of the Maharaja of Benares, comprising the following parganas:—Bhadohi and Kheyra Mangror in the Mirzapur District; Kaswa Raja in the Benares District", was rep. by the Benares Family Domains Act, 1881 (14 of 1881), s. 14.

[3] Except Lahaul and Spiti, these districts ceased to be part of India from 15th August 1947.

PART VI.

[1]Scheduled Districts, Central Provinces.

Chattisgarh Zamindaris.

1. Khariar.
2. Bindra Nawagarh.
3. Sahezpur.
4. Gandai.
5. Silheti.
6. Barbaspur.
7. Thakurtola.
8. Lohara.
9. Gondardehi.
10. Fingeswar.
11. Pandaria.
12 Pendra.
13. Matin.
14. Uprora.
15. Kenda.
16. Lapha.
17. Chhuri.
18. Korba.
19. Chapa.
20. Bora Sambhar.
21. Phuljhar.
22. Kolabira.
23. Rampur.

Chanda Zamindaris.

1. Ahiri.
2. Ambagarh Chauki.
3. Aundhi.
4. Dhanora.
5. Dudhmala
6. Gewarda.
7. Jharapapra.
8. Khutgaon.
9. Koracha.
10. Kotgal.
11. Muramgaon.
12. Panabaras.
13. Palasgarh.
14. Rangi.
15. Sirsundi.
16. Sonsari.
17. Chandala.
18. Gilgaon.
19. Pawi Mutanda.
20. Pategaon.

Chhindwara Jagirdaris.

1. Harai.
2. Chhater.
3. Gorakhghat.
4. Gorpani.
5. Bakhtagarh.
6. Bardagarh.
7. Pachmarhi.
8. Partabgarh.
9. Almod.
10. Sonpur.
11. Bariam Pagara.

PART VII.

The Chief Commissionership of Coorg.

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[1] The taluqs of Nugur, Albaka and Cherla which were transferred to the Madras Presidency with effect from 1st July 1909 had, from the 17th January 1905, become scheduled districts within the meaning of the Scheduled Districts Act, 1874 (14 of 1874).

PART VIII.

The Chief Commissionership of the Andaman and Nicobar Islands.

PART IX.

The Chief Commissionership of Ajmer and Merwara

PART X.

[1]The Chief Commissionership of Assam.

[*PART XI.—The Hill Tracts of Arakan.*] *Rep. by the A. O. 1937.*

[*PART XII.—The Pargana of Manpur.*] *Rep. by the Repealing Act, 1938 (I of 1938), s. 2 and Sch.*

[*PART XIII.—The Cantonment of Morar.*] *Rep. by the Amending Act, 1891 (XII of 1891).*

SEVENTH SCHEDULE.—[*Enactments Repealed.*] *Rep by the Repealing Act, 1876 (XII of 1876).*

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[1] The Lushai Hills, which include the North and South Lushai Hills and the Mokokchang Sub-division of the Naga Hills District, became Scheduled Districts for the purposes of the Scheduled Districts Act, 1874 (14 of 1874), but they are not Scheduled Districts within the meaning of this Act.

THE INDIAN MAJORITY ACT, 1875.

ACT No. IX of 1875.[1]

[*2nd March, 1875.*]

An Act to amend the law respecting the age of majority.

Preamble.

WHEREAS, in the case of persons domiciled in [~~Part A States and Part C States~~] it is expedient to prolong the period of nonage, and to attain more uniformity and certainty respecting the age of majority than now exists; It is hereby enacted as follows :—

Short title.

1. This Act may be called the Indian Majority Act, 1875.

Local extent.

[3][It extends to the whole of India except Part B States]; [2]

Commencement and operation.

and it shall come into force and have effect only on the expiration of three months from the passing thereof.

Savings.

2. Nothing herein contained shall affect—

(*a*) the capacity of any person to act in the following matters (namely),—marriage, dower, divorce and adoption ;

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[1] For the Statement of Objects and Reasons *see* Gazette of India, 1874, Pt. V, p. 153; for Proceedings in Council, *see ibid.*, Supplement p. 668, and Extra Supplement, dated 12th May, 1874, p. 4, and *ibid.*, 1875, Supplement, p. 333.

This Act has been extended to Berar by the Berar Laws Act, 1941 (4 of 1941) and has been declared by notification under s. 3(*a*) of the Scheduled Districts Act, 1874 (14 of 1874), to be in force in the following Scheduled Districts, namely :—

The Districts of Hazaribagh, Lohardaga and Manbhum, and Pargana Dhalbhum and the Kolhan in the District of Singhbhum. [The Lohardaga District included at this time the present District of Palamau, which was separated in 1894. Lohardaga is now called the Ranchi District; Calcutta Gazette, 1899, Pt. I, p. 44.] . .	*See* Gazette of India, 1881, Pt. I, p. 504.
The North-Western Provinces Tarai . .	Ditto 1876, Pt. I, p. 505.

[2] Subs. by the A. O. 1950 for "the Provinces" which had been subs. by the A. O. 1948 for "British India".

[3] Subs. by the A. O. 1950 for the original para. as amended by the A. O. 1948.

(*b*) the religion or religious rites and usages of any class of [1][citizens of India]; or

(*c*) the capacity of any person who before this Act comes into force has attained majority under the law applicable to him.

Age of majority of persons domiciled in Part A States and Part C States.

3. Subject as aforesaid, [2][every minor of whose person or property or both a guardian, other than a guardian for a suit within the meaning of Chapter XXXI of the Code of Civil Procedure[3], has been or shall be appointed or declared by any Court of Justice before the minor has attained the age of eighteen years, and every minor of whose property the superintendence has been or shall be assumed by any Court of Wards before the minor has attained that age] shall, notwithstanding anything contained in the Indian Succession Act (No. X of 1865)[4] or in any other enactment, be deemed to have attained his majority when he shall have completed his age of twenty-one years and not before.

V IV of 1882

Subject as aforesaid, every other person domiciled in [5][~~Part A States~~ and Part C States] shall be deemed to have attained his majority when he shall have completed his age of eighteen years and not before.

Age of majority how computed.

4. In computing the age of any person, the day on which he was born is to be included as a whole day, and he shall be deemed to have attained majority, if he falls within the first paragraph of section 3, at the beginning of the twenty-first anniversary of that day, and if he falls within the second paragraph of section 3, at the beginning of the eighteenth anniversary of that day.

Illustrations.

(*a*) Z is born in [5][a Part A State or a Part C State] on the first day of January 1850, and has [a [6][~~domicile in a Part A State or a Part C State~~] A guardian of his person is appointed by a Court of Justice. Z attains majority at the first moment of the first day of January 1871.

(*b*) Z is born in [5][a Part A State or a Part C State] on the twenty-ninth day of February 1852, and has [a [6][~~domicile~~ in a Part A State or a Part C State]. A guardian of his property is appointed by a Court of Justice. Z attains majority at the first moment of the twenty-eighth day of February 1873.

(*c*) Z is born on the first day of January 1850. He acquires a domicile in [5][a Part A State or a Part C State] No guardian is appointed of his person or property by any Court of Justice, nor is he under the jurisdiction of any Court of Wards. Z attains majority at the first moment of the first day of January 1868.

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[1] Subs. by the A. O. 1950 for "His Majesty's subjects in India".

[2] Subs. by the Guardians and Wards Act, 1890 (8 of 1890), s. 52, for "every minor of whose person or property a guardian has been or shall be appointed by any Court of Justice, and every minor under the jurisdiction of any Court of Wards".

[3] *See* now the Code of Civil Procedure, 1908 (5 of 1908), Sch. I, Order XXXII.

[4] *See* now the Indian Succession Act, 1925 (39 of 1925).

[5] Subs. by the A. O. 1950 for "the Provinces" which had been subs. by the A. O. 1948 for "British India".

[6] Subs. by the A. O. 1950 for "British Indian domicile".

THE INDIAN LAW REPORTS ACT, 1875.

ACT No. XVIII of 1875[1]

[*13th October, 1875.*]

An Act for the improvement of Law Reports.

[2] * * * *

Short title.

1. This Act may be called the Indian Law Reports Act, 1875.

Local extent.

It extends to [3][the whole of India, except Part B States];

Commencement.

And it shall come into force on such day as the [4][Central Government] notifies in this behalf in the [5][Official Gazette].

2. [*Repeal of Act II of 1875.*] *Rep. by the Repealing Act, 1876 (XII of 1876).*

Authority given only to authorized reports.

3. No Court shall be bound to hear cited, or shall receive or treat as an authority binding on it, the report of any case [6][decided on or after the said day by [7][any High Court for a Part A State]], other than a report published under the authority of [8][any State Government].

Authority of judicial decisions.

4. Nothing herein contained shall be construed to give to any judicial decision any further or other authority than it would have had if this Act had not been passed.

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[1] For the Statement of Objects and Reasons, *see* Gazette of India, 1875, Pt. V, p. 139; for Proceedings in Council, *see ibid.*, Extra Supplement, dated 31st July 1875, p. 5, and *ibid.*, Extraordinary, dated 25th October 1875, p. 1.

This Act has been extended to Berar by the Berar Laws Act, 1941 (4 of 1941) and has been declared, by notification under s. 3 (*a*) of the Scheduled Districts Act, 1874 (14 of 1874), to be in force in the following Scheduled Districts, namely :—

The Districts of Hazaribagh, Lohardaga and Manbhum, and Pargana Dalbhum and the Kolhan in the District of Singbhum: *See* Gazette of India, 1881, Pt. I, p. 504. [The District of Lohardaga included at this time the present District of Palamau, which was separated in 1894; Lohardaga is now called the Ranchi District, *see* Calcutta Gazette, 1899, Pt. I, p. 44.]

[2] Preamble rep. by the A. O. 1937.

[3] Subs. by the A. O. 1950 for "all the Provinces of India" which had been subs. by the A. O. 1948 for "the whole of British India."

[4] Subs. by the A. O. 1937 for "G. G. in C.".

[5] Subs. by the A. O. 1937 for "Gazette of India".

[6] Subs. by the A. O. 1937 for "decided by any of the said High Courts or by the Chief Court of Oudh on or after the said day".

[7] Subs. by the A. O. 1950 for "any Court in the Provinces which is a High Court for the purposes of the Government of India Act, 1931" the words "the Provinces" being subs. by the A. O. 1948 for "British India".

[8] The original words the "G. G. in C." have successively been amended by the Devolution Act, 1920 (38 of 1920), A. O. 1937 and A. O. 1950 to read as above.

THE CENTRAL PROVINCES LAWS ACT, 1875.

ACT No. XX of 1875.[1]

[*9th December, 1875*]

An Act to declare and amend the law in force in the Central Provinces.

WHEREAS it is expedient to declare and amend certain portions of the law in force in the Central Provinces ; It is hereby enacted as follows :— Preamble

1. This Act may be called the Central Provinces Laws Act, 1875 : Short title.

It extends to the territories now under the administration of the [2][State Government] of the Central Provinces , Local extent

And it shall come into force on the passing thereof Commencement.

2. On and from the date on which this Act comes into force the following shall be repealed, that is to say,— Repeal of enactments and rules

(*a*) all Bengal Regulations except the Regulations or parts of Regulations hereinafter declared to be in force ;

(*b*) all [3][Central Acts] (except the Acts mentioned in the schedule hereto annexed) which do not expressly or by necessary implication extend to the said territories or any part thereof, and have not been extended thereto in exercise of a power conferred by a [4][Central Act] ,

(*c*) all rules, regulations and enactments not being Statutes, Bengal Regulations, [3][Central Acts], or rules or regulations made in exercise of a power conferred by a Statute, Bengal Regulation or [4][Central Act]

[5]* * * * *

3. On and from the said date the enactments specified in the schedule hereto annexed shall be deemed to be in force throughout the said territories to the extent mentioned in the third column of the said schedule Certain enactments to be deemed to be in force

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[1] For Statement of Objects and Reasons, *see* Gazette of India, 1875, Pt. V, p 159, and for Proceedings in Council, *see ibid*, Extra Supplement, dated 14th August 1875, p. 66; *ibid.*, dated 21st August 1875, p 6; and *ibid*, Supplement, p. 981.

[2] Subs. by the A. O. 1950 for "Provincial Government" which had been subs. by the A. O. 1937 for "Chief Commissioner".

[3] Subs. by the A. O. 1950 for "Acts of the Central Legislature" the words "Central Legislature" being subs. by the A. O. 1937 for "G. G. in C.".

[4] Subs. by the A. O. 1950 for "Act of the Central Legislature" the words "Central Legislature" being subs. by the A. O. 1937 for "G. G. in C.".

[5] The proviso as to the law relating to land-revenue and Courts of Wards was rep by the Amending Act, 1891 (12 of 1891).

But the powers and duties incident to the operation of the same enactments, so far as such powers and duties are referred to in the fourth column of the said schedule, shall be exercised and performed by the authorities mentioned in that column.

Nothing in this section shall be deemed to affect the operation of any enactment not mentioned in the said schedule.

Confirmation of existing Acts.

4. Every [1][Central Act] which extends, or can by notification be extended, to the territories which were under the administration of the said [2][State Government] at the time of the passing thereof, shall extend, or may by notification be extended, as the case may be, to all the territories now under the administration of the said [2][State Government].

Rule of decision in cases of certain classes.

[3]**5.** In questions regarding inheritance, special property of females, betrothal, marriage, dower, adoption, guardianship, minority, bastardy, family, relations, wills, legacies, gifts, partitions or any religious usage or institution, the rule of decision shall be the Muhammadan law in cases where the parties are Muhammadans, and the Hindu law in cases where the parties are Hindus, except in so far as such law has been by legislative enactment altered or abolished, or is opposed to the provisions of this Act :

Provided that when among any class or body of persons or among the members of any family any custom prevails which is inconsistent with the law applicable between such persons under this section, and which, if not inconsistent with such law, would have been given effect to as legally binding, such custom shall, notwithstanding anything herein contained, be given effect to

Rules in cases not expressly provided for.

6. In cases not provided for by section 5, or by any other law for the time being in force, the Courts shall act according to justice, equity and good conscience.

Articles exempt from attachment.

7. Implements of husbandry and cattle for agricultural purposes and implements of trade are exempted from attachment and sale in execution of decrees of the Civil Courts.

Power to make subsidiary rules.

8. The said [2][State Government] may from time to time make rules consistent with this Act as to the following matters :—

(*a*) the maintenance of watch and ward and the establishment of proper system of conservancy and sanitation at fairs and other large public assemblies ;

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[1] Subs. by the A. O. 1950 for "Act of the Central Legislature", the words "Central Legislature" being subs. by the A. O. 1937 for "G. G. in C.".

[2] Subs. by the A. O. 1950 for "Provincial Government" which had been subs. by the A. O. 1937 for "Chief Commissioner".

[3] The provisions of this section have been repealed in so far as they are inconsistent with the provisions of the Muslim Personal Law (Shariat) Application Act, 1937 (26 of 1937): *see* s. 6 of that Act.

(*b*) the imposition of taxes for the purposes mentioned in clause (*a*) of this section on persons holding or joining any of the assemblies therein referred to ;

(*c*) the custody of judicial records, civil and criminal ;[1]* *

[2]* * * * *

9. The [3][State Government] may, in making any rule under this Act, attach to the breach of it, in addition to any other consequences that would ensue from such breach, a punishment, on conviction before a Magistrate, not exceeding one month's imprisonment, or two hundred rupees fine, or both. Penalty for breach of rules.

10. All rules made under this Act shall [4]* * * be published in the [5][Official Gazette] and shall thereupon have the force of law. Publication of rules. Force of rules.

[6][**11.** Sections 184, 185 and 189 of the Code of Civil Procedure[7] are hereby repealed.] Local repeal, in part, of Code of Civil Procedure.

[6][**12.** For sections 182, 190 and 191 of the same Code[8] the following shall be substituted (namely) :— Sections substituted in same Code.

"182. A note of the essential points of the evidence of each witness shall be made at the time, and in the course of oral examination, by the Judge, in his own language, or in English if he is sufficiently acquainted with that language, and such notes shall be filed with, and form part of the record of the case. Note of evidence to be taken.

"190. If the Judge be prevented from making a note as above required, he shall record the reason of his inability to do so, and shall cause such note to be made in writing from his dictation in open Court, and shall sign the same, and such note shall form part of the record. Judge unable to make note to record reason of his inability.

"191. When the Judge making a note of the evidence, or causing one to be made as above required, dies or is removed from the Court before the conclusion of the suit, his successor may, if he thinks fit, deal with such note as if he himself had made it or caused it to be made."] Power to use note made by Judge dying or removed before conclusion of suit.

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[1] The words "and the destruction from time to time of such of the said records as it may be deemed unnecessary to keep" rep. by the Destruction of Records Act, 1879 (3 of 1879).

[2] Cl. (*d*) relating to the appointment, duties, punishment, suspension and dismissal of all ministerial officers rep. by the A. O. 1937.

[3] Subs. by the A. O. 1950 for "Provincial Government" which had been subs. by the A. O. 1937 for "Chief Commissioner".

[4] The words "when sanctioned by the G. G. in C." rep. by the Devolution Act, 1920 (38 of 1920), s. 2 and Sch. I.

[5] Subs. by the A. O. 1937 for "C. P. Gazette".

[6] Ins. by the C. P. Laws Act, 1879 (2 of 1879), s. 2.

[7] *See* now the Code of Civil Procedure, 1908 (5 of 1908), Sch. I, Order XVIII, rules 8, 9 and 13.

[8] *See* rules 5, 14 and 15, *ibid.*

SCHEDULE.

(*See section 3.*)

A.—Bengal Regulations.[1]

Number and year of Regulation.	Subject.	Extent of operation.	Powers or duties how to be exercised or performed.
1	2	3	4
*	*	*	*
V of 1799 .	Estates of Intestates.	[2][Sections 4, 5, 6 and 7.]	[2][The functions of the Court of "Sadr Diwani Adalat" and of "the Board of Revenue" shall be performed respectively by the[3] Judicial Commissioner and by the [4][Provincial Government].]
*	*	*	*
XI of 1806 .	Passage of Troops.	Sections 2 to 6 and section 8, with the exception of such part as authorizes Collectors and their native officers, or Magistrates and their Police-officers to give their official aid in procuring	The powers[5] * * of the "Board of Revenue" shall be exercised by the [6][Central Government].

[1] So much of Act 20 of 1875 as relates to the following Bengal Regulations was rep. by the Act noted against each :—

Ben. Reg. 1 of 1798 . . . Transfer of Property Act, 1882 (4 of 1882).
Ben. Reg. 10 of 1804 . . . Special Laws Repeal Act, 1922 (4 of 1922).
Ben. Reg. 17 of 1806 . . . Transfer of Property Act, 1882 (4 of 1882).
Ben. Reg. 20 of 1810 . . . Cantonments Act, 1889 (13 of 1889).
Ben. Reg. 5 of 1817 . . . Indian Treasure-trove Act, 1878 (6 of 1878).
Ben. Reg. 20 of 1825 . . . Code of Criminal Procedure, 1882 (10 of 1882).

Ben. Reg. 6 of 1819 was rep. in the C. P. by the Northern India Ferries Act, 1878 (17 of 1878), and later generally, by the Amending Act, 1891 (12 of 1891).

[2] Subs. by the C. P. Laws (Amendment) Act, 1923 (C. P. 9 of 1923), s. 2, for the original entries.

[3] *See* however the C. P. Courts Act, 1917 (C. P. 1 of 1917), s. 31.

[4] Subs. by the A. O. 1937 for "L. G."

[5] The words "of the G. G. in C. and" rep. by the A. O. 1937.

[6] Subs. by the A. O. 1937 for "Chief Commissioner".

SCHEDULE—*continued.*

A.—BENGAL REGULATIONS—*concluded.*

Number and year of Regulation.	Subject.	Extent of operation.	Powers or duties how to be exercised or performed.
1	2	3	4
XI of 1806—*concld.*	..	coolies for the purpose of facilitating the march of troops or the progress of travellers, and with the exception, in section 8, of the words and figures [1] "*under the rules prescribed by Regulation V, 1804*".	
2*	*	*	*
XI of 1812 .	Foreign Immigrants.	So much as has not been repealed.	The powers of the "Nizamat Adalat" shall be exercised by the [3] Judicial Commissioner.
2*	*	*	*
III of 1818 .	State Prisoners .	So much as has not been repealed.	
2*	*	*	*
VI of 1825 .	Supply of troops on the march.	The whole . . .	The powers of the "Board of Revenue" shall be exercised by the [4][Central Government].
XI of 1825 .	Alluvion and Diluvion.	The whole . . .	
2*	*	*	*
X of 1827 .	Administration of landed property.	So much as has not been repealed, except the words and figures "and clauses 5 and 6, Section XVI, Regulation III, 1803".	The powers of the "Board of Revenue" shall be exercise by the [4][Provincial Government]

[1] These words and figures have since been rep. by the Amending Act, 1891 (12 of 1891).

[2] *See* first note on preceding page.

[3] *See* however the C. P. Courts Act, 1917 (C. P. 1 of 1917), s. 31.

[4] Subs. by the A. O. 1937 for "Chief Commissioner".

SCHEDULE—*concluded.*

B.—ACTS OF THE GOVERNOR GENERAL IN COUNCIL.

Number and year of Act.	Subject.	Extent of operation.
1	2	3
VIII of 1851 . .	Tolls on Roads and Bridges .	The whole Act, except section 1, and the schedule.
1*	*	*
XIII of 1857 . .	Opium	Sections 21, 22, 23, 25, 26, 27, 28, 29.
2*	*	*
XV of 1861 . .	Tolls	The whole Act.

THE CHOTA NAGPUR ENCUMBERED ESTATES ACT. 1876.

CONTENTS.

PREAMBLE.

SECTIONS..

I.—PRELIMINARY.

1. Short title.

II.—VESTING ORDER.

2. Power to vest management of property in an officer appointed by Commissioner.

2A. Power of Deputy Commissioner to order production of statement and documents.

2B. Power of Commissioner to prohibit sale of immovable property.

[1] The entry relating to Act 18 of 1853 (Sale of Spirits in Cantonments) was rep. by the Amending Act, 1891 (12 of 1891).

[2] The entry relating to the Minors Act. 1858 (40 of 1858), was rep. by the Guardians and Wards Act. 1890 (8 of 1890).

SECTIONS.

3. Effect of order.
Bar of suits.
Freedom from arrest.
Movable property not attachable for prior debts.
Cessation of power to alienate.
Immovable property freed from attachment.
Cessation of power to contract.

III.—DUTIES OF MANAGER.

4. Manager to receive rents and profits, and pay therefrom—
the Government demand,
rent due to superior landlord,
for maintenance of holder and his heir,
loans raised for estate,
costs of repairs and improvements, costs of management, debts and liabilities.

IV.—SETTLEMENT OF DEBTS.

5. Notice to claimant against holder of property.
Notice how published.

6. Claim to contain full particulars.
Documents to be given up.
Entries in books.
Exclusion of documents not produced.

7. Debt not duly notified to be barred.
Admission of claim within further period.
Barring of debts incurred after making petition for postponement of orders for application of Act.

8. Determination of debts.

9. Power to inquire into consideration for leases or grants.
Power to set aside leases or grants.

10. Appeal to Deputy Commissioner.
Appeal to Commissioner.

10A. Review by Commissioner.

11. Scheme for settlement of debts.

11A. Proceedings of Commissioner on submission of scheme.

SECTIONS.

11B. Power of Commissioner to relinquish management or modify approved scheme.

12 Restoration of owner to his property.
Restoration to be notified.
Revival of barred proceedings and debts.
Re-instatement of mortgagees.
Period of limitation as to revived proceedings and debts

12A Continuance of disabilities after restoration of property to owner

V.—POWERS OF MANAGER

13. Power to call for further particulars.

14 Power to summon witnesses and compel production of documents

14A. Power to order production of title to tenures and under-tenures

15 Investigation to be deemed a judicial proceeding.
Statements of persons examined to be evidence.

16. Manager to have powers of holder of estate.
Power to remove mortgagee or conditional vendee in possession.

17. Power to lease.

18 Power of Manager to raise money by mortgage, sale or loan

18A. Freedom from obligation to inquire into necessity for, or application of, money.

18B. Power of Manager to contract and take action for the benefit of the property.

VI.—MISCELLANEOUS.

19 Power to make rules

19A Power to make orders as to education of holder's children.
Penalty for disobedience.

19B. Recovery of fines.

20. Power to appoint new Managers.

21. Managers to be public servants.

21A. Control by Board of Revenue

21B Suits and appeals by and against holder, during management.

SECTIONS.

22. Bar of suits.

23. Saving of jurisdiction of Courts in Chota Nagpur in respect of certain suits

24. [*Repealed.*]

ACT No. VI of 1876.[1]

[*14th March, 1876*]

An Act to relieve certain landholders in Chota Nagpur.

WHEREAS it is expedient to provide for the relief of holders of land in Chota Nagpur who may be in debt, and whose immovable property may be subject to mortgages, charges and liens; It is hereby enacted as follows :— Preamble.

I.—PRELIMINARY.

1. This Act may be called the Chota Nagpur Encumbered Estates Act, 1876. Short title.

II.—VESTING ORDER.

2. Whenever any holder of immovable property, Power to vest management of property in an officer appointed by Commissioner.

or (when such holder is a minor, or of unsound mind, or an idiot) his guardian, committee or other legal curator,

or the person who would be heir to such holder if he died intestate,

or (when such person is a minor, or of unsound mind, or an idiot) his guardian, committee or other legal curator,

[2][or the Deputy Commissioner within whose jurisdiction any such property belonging to such holder is situate, when—

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[1] For Statement of Objects and Reasons, *see* Gazette of India, 1876, Part V, p. 21: and for Proceedings in Council, *see ibid.*, 1876, Supplement, pp. 54, 59, 195, 218, 289 and 322.

This Act applies only to the Chota Nagpur Division of Bihar. It has also been applied, with certain modifications, to the Deo Estate in the Gaya District—*see* the Deo Estate Act, 1886 (9 of 1886).

[2] Subs. by the Chota Nagpur Encumbered Estates (Amendment) Act, 1909 (Ben. 3 of 1909), s. 2 (1), for "or, when any such property belonging to such holder has been attached in execution of a decree of a Civil Court, the Deputy Commissioner within whose jurisdiction such property is situate".

(*i*) attachment has been made of, or a proclamation has been issued for the sale of, such property or any portion thereof, in execution of a decree or order of a Civil Court or a Revenue Court, or

(*ii*) such Deputy Commissioner is satisfied, after making such inquiry as he may think fit, and after considering and placing on record all representations (if any) made by such holder, that such holder has entered upon a course of wasteful extravagance likely to dissipate his property.]

applies in writing to the Commissioner, stating that the holder of the said property is subject to, or that his said property is charged with, debts or liabilities other than debts due, or liabilities [1][incurred to the Government], and requesting that the provisions of this Act be applied to his case,

the Commissioner may, with the previous consent of the [2][State Government] [3][(to be obtained through the Board of Revenue)], by order published in the [4][Official Gazette], appoint an officer (hereinafter called the Manager), and vest in him the management of the whole or any portion of the immovable property of or to which the said holder is then possessed or entitled in his own right, or which he is entitled to redeem, or which may be acquired by or devolve on him or his heir, during the continuance of such management :

[5][Provided as follows—

First, if any holder referred to in clause (*ii*) of this section petitions the Commissioner, while the inquiry referred to in that clause is being made, to postpone, until the petitioner has been heard, the passing of orders on any request that the Deputy Commissioner may make for applying the provisions of this Act to his case,

and if a request as aforesaid be made by the Deputy Commissioner,

the Commissioner shall appoint a day for hearing the petitioner ; and if he appears, either in person or by agent, on the day so appointed, and on the subsequent day (if any) to which the hearing is adjourned, the Commissioner shall not pass any order in the matter until he has been heard :

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[1] Subs. by the A. O. 1950 for "incurred to the Crown" which had been subs. by the O. 1937 for "incurred, to Govt."

[2] Subs. by the A. O. 1950 for "Provincial Govt." which had been subs. by the A. O. 1937 for "Lieutenant-Governor of Bengal".

[3] Ins. by the Chota Nagpur Encumbered Estates (Amendment) Act, 1909 (Ben. 3 of 1909), s. 2 (2).

[4] Subs. by the A. O. 1937 for "Calcutta Gazette".

[5] Provisos ins. by Ben. Act 3 of 1909, s 2 (3).

(*II.—Vesting Order.*)

Secondly, if any holder referred to in clause (*ii*) of this section petitions the Board of Revenue, while any proceedings are pending before the Commissioner under proviso *First,* to postpone, until the petitioner has been heard, the passing of orders on any request that the Commissioner may make for the consent of the [1][State Government] to the application of the provisions of this Act to his case.

and if a request as aforesaid be made by the Commissioner,

the Board of Revenue shall appoint a day for hearing the petitioner; and if he appears, either in person or by agent, on the day so appointed, and on the subsequent day (if any) to which the hearing is adjourned, the Board shall not pass any order in the matter until he has been heard;

Thirdly, the consent of the [1][State Government] shall not be given in the case of any holder referred to in clause (*ii*) of this section unless either—

such holder belongs to a family of political or social importance,

or

the [1][State Government] is satisfied that it is desirable, in the interest of the tenants of such holder, that such consent should be given]

[2][Every application under this section must state—

(*a*) the particulars of the debts and liabilities as aforesaid to which the said holder is subject or with which his immovable property is charged ; and

(*b*) the particulars of the immovable property of or to which he is then possessed or entitled in his own right or which he is entitled to redeem.

Every such application must, except when it is made by a Deputy Commissioner, be verified by the applicant or by some other competent person in the manner required by law[3] for the verification of plaints; and, if it contains any averment which the person making the verification knows or believes to be false or does not know or believe to be true, he shall be deemed to have given false evidence within the meaning of the Indian Penal Code]

XLV of 1860.

[4][**2A.** (*1*) For the purpose of making an application under section 2 in the case of any holder, the Deputy Commissioner may, by written order, Power of Deputy Commissioner to

[1] Subs. by the A. O. 1950 for "Provincial Govt." which had been subs by the A. O. 1937 for "Lieutenant-Governor".

[2] Ins. by the Chota Nagpur Encumbered Estates (Amendment) Act, 1881 (5 of 1881), s. 2.

[3] See the Code of Civil Procedure, 1908 (5 of 1908), Sch I, Order VI, rule 15.

[4] S. 2A ins. by the Chota Nagpur Encumbered Estates (Amendment) Act, 1909 (Ben. 3 of 1909), s. 3.

order production of statement and documents.

require the said holder to produce before him, on a date to be stated in such order,—

(*i*) a statement in writing, showing—

(*a*) all debts and liabilities to which the said holder is subject,

(*b*) the amount, kind and particulars of his property, and the annual value of any such property not consisting of money,

(*c*) the names and residences of his creditors, so far as they are known to, or can be ascertained by him, and

(*d*) such other information as the Deputy Commissioner may, by his order, require, and

(*ii*) such documents relating to his estate, which are in the possession, power or control of the holder, as the Deputy Commissioner may deem necessary.

(2) The Deputy Commissioner may, by a like order, call upon any person in whose possession, power or control he has reason to believe there is any document relating to a debt or liability to which the holder is subject, to submit the same to him for the aforesaid purpose.]

Power of Commissioner to prohibit sale of immovable property.

[1][**2B.** At any time after the receipt of an application under section 2 from or in the case of any holder, the Commissioner may, by order, prohibit the sale of the immovable property of such holder or any portion thereof, in execution of any decree or order of any Civil or Revenue Court, until the passing of final orders on such application, either rejecting it or vesting the property in a manager.]

Effect of order.

3. [2] [On the publication of an order under section 2] the following consequences shall ensue :—

Bar of suits.

First, all proceedings which may then be pending in any Civil Court in [3][any Part A State or Part C State] [4][or in any Revenue Court [5][in Bihar or in West Bengal or in that part of Orissa which in the year 1909 was included in the Presidency of Bengal]], in respect to such debts or liabilities, shall be barred; and all processes, executions and attachments for or in respect of such debts and liabilities shall become null and void ;

Freedom from arrest.

Secondly, so long as such management continues,

the holder of the said property and his heir shall not be liable to arrest for or in respect of the debts and liabilities to which the said holder was immediately before the said publication subject, or with which the property

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[1] S. 2B ins. by the Chota Nagpur Encumbered Estates (Amendment) Act, 1911 (Ben. 4 of 1911), s. 2.

[2] Subs. by the Chota Nagpur Encumbered Estates (Amendment) Act, 1884 (5 of 1884), s. 3, for "On such publication".

[3] Subs. by the A. O. 1950 for "any Province" which had been subs. by the A. O. 1948 for "British India".

[4] Ins. by the Chota Nagpur Encumbered Estates (Amendment) Act, 1909 (Ben. 3 of 1909), s. 4 (*1*).

[5] Subs. by the A. O. 1948 for "in Bengal".

so vested as aforesaid or any part thereof was at the time of the said publication charged, other than debts due, or liabilities [1][incurred, to the Government],

nor shall their movable property be liable to attachment or sale, under process of any Civil Court in [2][any Part A State or Part C State] [3][or any Revenue Court [4][in Bihar or in West Bengal or in that part of Orissa which in the year 1909 was included in the Presidency of Bengal]], for or in respect of such debts and liabilities, other than as aforesaid ; and

Movable property not attachable for prior debts.

Thirdly, so long as such management continues,

(*a*) the holder of the said immovable property and his heir shall be incompetent to mortgage, charge, lease or alienate their immovable property or any part thereof, or to grant valid receipts for the rents and profits arising or accruing therefrom,

Cessation of power to alienate.

(*b*) such property shall be exempt from attachment or sale under such process as aforesaid, except for or in respect of debts due, or liabilities [1][incurred, to the Government], and

Immovable property freed from attachment.

(*c*) the holder of the same property and his heir shall be incapable of entering into any contract which may involve them, or either of them, in pecuniary liability.

Cessation of power to contract.

III.—DUTIES OF MANAGER.

4. The Manager shall, during his management of the said immovable property, receive and recover all rents and profits due in respect thereof, and shall, upon receiving such rents and profits, give receipts for the same.

Manager to receive rents and profits,

From the sums so received, he shall pay—

and pay therefrom—

first, the Government revenue, and all debts or liabilities for the time being due or [1][incurred to the Government] ;

the Government demand,

secondly, in the case of under-tenures, the rent (if any) due to the superior landlord, in respect of the said property ;

rent due to superior landlord,

thirdly, such annual sum as appears to the Commissioner requisite for the maintenance of the holder of the property, his heir, and their families ;

for maintenance of holder and his heir,

[5] [*fourthly,* all sums due in re-payment of loans effected under the power conferred by clause (*c*) of section 18] ;

loans raised for estate,

[6] [*fifthly*], the costs of such repairs and improvements of the property as appear necessary to the Manager and are approved by the Commissioner ;

costs of repairs and improvements,

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[1] Subs. by the A. O. 1950 for "incurred to the Crown" which had been subs. by the A. O. 1937 for "incurred, to Government."

[2] Subs. by the A. O. 1950 for "any Province" which had been subs. by the A. O. 1948 for "British India."

[3] Ins. by the Chota Nagpur Encumbered Estates (Amendment) Act, 1909 (Ben. 3 of 1909), s. 4(2).

[4] Subs. by the A. O. 1948 for "in Bengal".

[5] Ins. by Ben. Act 3 of 1909, s. 5 (*1*).

[6] Subs. by s. 5 (*1*), *ibid.*, for "*fourthly*".

costs of management, debts and liabilities.

and the residue shall be applied in discharge of the costs of the management, and in settlement of such debts and liabilities of the holder of the property and his heir as may be established under the provisions hereinafter contained,

[1]* * * * *

IV.—SETTLEMENT OF DEBTS.

Notice to claimant against holder of property.

5. On the publication of the order vesting in him the management of the said property, the Manager shall publish a notice, in English [2][and the language of the district or estate], calling upon all persons having claims against the holder of the said property to notify the same in writing to such Manager within three months from the date of the publication.

Notice how published.

Such notice shall be published by being posted at the *cutcherries* in the district or districts in which the said property lies, and at such other places as the Manager thinks fit.

Claim to contain full particulars.

6. Every such claimant shall, along with his claim, present full particulars thereof.

Documents to be given up.

Every document on which the claimant founds his claim, or on which he relies in support thereof, shall be delivered to the Manager along with the claim.

Entries in books.

If the document be any entry in any book, the claimant shall produce the book to the Manager, together with a copy of the entry on which he relies. The Manager shall mark the book for the purpose of identification, and, after examining and comparing the copy with the original, shall return the book to the claimant.

Exclusion of documents not produced.

If any document in the possession or under the control of the claimant is not delivered or produced by him to the Manager along with the claim, the Manager may refuse to receive such document in evidence on the claimant's behalf at the investigation of the case.

Debt not duly notified to be barred.

7. Every debt or liability, other than debts due, or liabilities [3][incurred, to the Government] or (in the case of under-tenures) the rent due to the superior landlord, to which the holder of the property is subject, or with which the property is charged, and which is not duly notified to the Manager within the time and in manner hereinbefore mentioned, shall be barred:

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[1] The words "and also in or towards the re-payment, either before or after the liquidation of such debts and liabilities, of any loan received from the Government by the Manager under this Act" rep. by the Chota Nagpur Encumbered Estates (Amendment) Act, 1909 (Ben. 3 of 1909), s. 5 (2).

[2] Subs. by s. 6, *ibid.*, for "Urdu and Hindi".

[3] Subs. by the A. O. 1950 for "incurred to the Crown" which had been subs. by the A. O. 1937 for "incurred, to Govt."

(*IV.—Settlement of Debts.*)

Provided that, when proof is made to the Manager that the claimant was unable to comply with the provisions of sections 5 and 6, the Manager may admit his claim within the further period of [1][six months] from the expiration of the said period of three months.

Admission of claim within further period.

[2][If a holder of property has petitioned the Commissioner, under the first proviso in section 2 or the first proviso to section 12A, sub-section (5), to postpone the passing of orders on any request that the Deputy Commissioner might make for applying or re-applying the provisions of this Act to his case,

Barring of debts incurred after making petition for postponement of orders for application of Act.

every debt or liability which such holder has, after the date on which the said request was made, incurred, or charged upon his property, shall be barred, with the exception of—

(*a*) debts due, or liabilities [3][incurred, to the Government],

(*b*) debts or liabilities which the Deputy Commissioner is satisfied had necessarily to be incurred for the maintenance of such holder or his family,

(*c*) in the case of under-tenures, the rent due to the superior landlord, and

(*d*) interest due in respect of debts or liabilities incurred before the said date.]

8. The Manager shall, in accordance with the rules to be made under this Act, determine the amount of all principal debts and liabilities justly due to the several creditors of the holder of the property, and to persons holding mortgages, charges or liens thereon, and the interest (if any) due at the date of such determination, in respect of such debts and liabilities.

Determination of debts.

9. If such property or any part thereof be in the possession of any person claiming to hold it under a lease [4][or rent-free or maintenance grant] dated within the three years immediately preceding the publication of the order mentioned in section 2, the Manager, with the sanction of the Deputy Commissioner and Commissioner (or of the Commissioner only, if the Deputy Commissioner be himself the Manager), may inquire into the sufficiency of the consideration for which the lease [4][or grant] was given;

Power to inquire into consideration for leases or grants.

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[1] Subs. by the Chota Nagpur Encumbered Estates (Amendment) Act, 1884 (5 of 1884), s. 5, for "nine months".

[2] Ins. by the Chota Nagpur Encumbered Estates (Amendment) Act, 1909 (Ben. 3 of 1909), s. 7.

[3] Subs. by the A. O. 1950 for "incurred to the Crown" which had been subs. by the A. O. 1937 for "incurred, to Govt.".

[4] Ins. by Ben. Act 3 of 1909, s. 8.

Power to set aside leases or grants.

and, if such consideration appear to him insufficient, may by order either set aside the lease [1][or grant] or cause the person so in possession to pay such consideration for the said lease [1][or grant] as the Manager thinks fit, and in default of such payment the lease [1][or grant] shall be cancelled:

[1][Provided that no rent-free or maintenance grant shall be set aside or cancelled without the previous sanction of the Commissioner, which may be accorded only if he is satisfied that the grant was not made in good faith.]

Appeal to Deputy Commissioner.

10. An appeal against any refusal, admission, determination or order under section 6, 7, 8 or 9, [2][except a refusal under the proviso to section 9], shall lie, if preferred within six weeks from the date thereof, to the Deputy Commissioner within whose jurisdiction the property is situate; and the decision of the Manager, if no such appeal has been so preferred, [3][shall, subject to the provisions of sections 10A and 21A, be final]:

Provided that, if the Deputy Commissioner be himself the Manager, the appeal shall lie to the Commissioner.

Appeal to Commissioner.

An appeal shall lie from any decision of the Deputy Commissioner, if preferred within six weeks of the date of his decision, to the Commissioner; and the decision of such Commissioner, or of the Deputy Commissioner, if no such appeal has been so preferred [3][shall, subject to the provisions of sections 10A and 21A, be final].

Review by Commissioner.

[4][**10A.** The Commissioner may of his own motion review any order or proceeding under section 6, 7, 8, 9, or 10, and may revise, modify, or reverse the same.]

Scheme for settlement of debts.

11. When the amount due in respect of the debts and liabilities mentioned in section 8 has been finally determined, the Manager shall prepare and submit to the Commissioner a schedule of such debts and liabilities, and a scheme for the settlement thereof [5]* * * *.

[5]* * * * *

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[1] Ins. by the Chota Nagpur Encumbered Estates (Amendment) Act, 1909 (Ben. 3 of 1909), s. 8.

[2] Ins. by s. 9, *ibid.*

[3] Subs. by s. 9, *ibid*, for "shall be final".

[4] S. 10A ins. by s. 10, *ibid.*

[5] The words "and such scheme when approved by the Commissioner shall be carried into effect" and the second paragraph of s. 11 were rep. by the Chota Nagpur Encumbered Estates (Amendment) Act, 1922 (B. and O. 8 of 1922), s. 2.

(*IV.—Settlement of Debts.*)

[1][**11A.** (*1*) The Commissioner may— **Proceedings of Commissioner on submission of scheme.**

(*a*) as often as he thinks fit before approving the scheme send it back to the Manager for revision, and direct him to make such further inquiry as may be requisite for the proper preparation thereof, or

(*b*) approve the scheme, or any revised scheme, submitted to him, either as it stands or subject to such modification (if any) as he may deem expedient.

(2) Such scheme or revised scheme when so approved shall be carried into effect subject to any modifications that may subsequently be made therein under section 11B.

11B. If at any time after the approval of the scheme or of any modification thereof made in the manner hereinafter provided in this section, new circumstances come into existence, facts are disclosed or events occur, which, in the opinion of the Commissioner, render the scheme unsuitable for the settlement of the debts and liabilities mentioned in the schedule referred to in section 11, the Commissioner may, with the previous sanction of the Board of Revenue, direct— **Power of Commissioner to relinquish management or modify approved scheme.**

(*a*) that the management of the property be relinquished, or

(*b*) that the scheme be modified or, if it has already been modified under this section, that it be further modified, and any modification made in compliance with such direction shall, after it has been approved by the Commissioner, take effect as part of the scheme.]

12. [2][When all the debts and liabilities mentioned in the schedule referred to in section 11, and the amount of any loan [3][effected under the power conferred by clause (*c*) of section 18,] together with the interest (if any) due thereon, have been paid and discharged], **Restoration of owner to his property**

[2][or if the Commissioner, at any time before a scheme has been approved by him under section [4][11A], thinks that the provisions of

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[1] Ss. 11A and 11B ins. by the Chota Nagpur Encumbered Estates (Amendment) Act, 1922 (B. & O. 8 of 1922), s. 3.

[2] Subs. by the Chota Nagpur Encumbered Estates (Amendment) Act, 1884 (5 of 1884), s. 6, for the original clause.

[3] Subs. by the Chota Nagpur Encumbered Estates (Amendment) Act, 1909 (Ben. 3 of 1909), s. 11 (*1*), for "received from the Govt. under section eighteen".

[4] Subs. by B. & O. Act 8 of 1922, s. 4, for "11".

this Act should not continne to apply to the case of the holder of the said property or his heir], [1][or if after a scheme has been so approved a direction is made under section 11B for the relinquishment of the management of the property],

[2][or if at any time an arrangement is made for the satisfaction of the debts and liabilities which is accepted by the creditors and approved by the Commissioner],

such holder or his heir shall be restored to the possession and enjoyment of the property, or of such part thereof as has not been sold by the Manager under the power contained in section 18, but subject to the leases and mortgages (if any) granted and made by the Manager under the powers hereinafter contained:

[3][Provided that, where a fresh order has been made under section 2, in pursuance of section 12A, sub-section (5), re-appointing a Manager and vesting in him the management of the whole or any portion of the property of any holder, such property shall not be restored to such holder, but shall be retained by the Manager for restoration to the heir of such holder in due course.]

Restoration to be notified.

Where the holder of the property or his heir is so restored under the circumstances mentioned in the second clause of this section, such restoration shall be notified in the [4][Official Gazette]; and thereupon the proceedings, processes, executions and attachments mentioned in section 3 (so far as they relate to debts and liabilities which the Manager has not paid off or compromised), and the debts and liabilities barred by section 7, shall be revived; and any mortgagee or conditional vendee dispossessed under section 16 shall be reinstated, unless his claim under the mortgage or conditional sale has been satisfied;

Revival of barred proceedings and debts.

Reinstatement of mortgagees

Period of limitation as to revived proceedings and debts.

and in calculating the periods of limitation applicable to such revived proceedings, and to suits to recover and enforce such revived debts and liabilities, the time intervening between such restoration and the publication of the order mentioned in section 2 [5][or the making of the order (if any), mentioned in section 2B] shall be excluded.

Continuance of disabilities

[6][**12A.** (*1*) When the possession and enjoyment of property is restored, under the circumstances mentioned in the first or the third clause

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[1] Ins. by the Chota Nagpur Encumbered Estates (Amendment) Act, 1922 (B. & O. 8 of 1922), s. 4.

[2] Ins. by the Chota Nagpur Encumbered Estates (Amendment) Act, 1884 (5 of 1884), s. 6 (*3*).

[3] Ins. by the Chota Nagpur Encumbered Estates (Amendment) Act, 1909 (Ben. 3 of 1909), s. 11 (*2*).

[4] Subs. by the A. O. 1937 for "Calcutta Gazette".

[5] Ins. by the Chota Nagpur Encumbered Estates (Amendment) Act, 1911 (Ben. 4 of 1911), s. 3.

[6] S. 12A ins. by Ben. Act 3 of 1909, s. 12.

of section 12, to the person who was the holder of such property when the application under section 2 was made, such person shall not be competent, without the previous sanction of the Commissioner,— after restoration of property to owner.

(*a*) to alienate such property, or any part thereof, in any way, or

(*b*) to create any charge thereon extending beyond his lifetime.

(*2*) If the Commissioner refuses to sanction any such alienation or charge, an appeal shall lie to the Board of Revenue, whose decision shall be final.

(*3*) Every alienation and charge made or attempted in contravention of sub-section (*1*) shall be void.

(*4*) The Deputy Commissioner may at any time, either of his own motion or on the application of any person interested, make an inquiry to ascertain whether any holder of property who is referred to in sub-section (1) has made or attempted to make any alienation or charge in contravention of that sub-section, and shall consider and place on record all representations (if any) made by such holder and by the person in whose favour such alienation or charge is alleged to have been made.

(*5*) If the Deputy Commissioner is satisfied, after making such an inquiry, that such holder has made or attempted to make any alienation or charge in contravention of sub-section (1), he may make a report to the Commissioner, setting forth the result of the inquiry and showing all debts and liabilities to which such holder is subject, and requesting that the provisions of this Act be re-applied to his case; and the Commissioner may, with the previous consent of the [1][State Government] (to be obtained through the Board of Revenue), publish a fresh order under section 2, re-appointing a Manager and vesting in him the management of the whole or any portion of the property of such holder:

Provided as follows—

First, if the said holder petitions the Commissioner, while the said inquiry is being made, to postpone, until the petitioner has been heard, the passing of orders on any request that the Deputy Commissioner may make for re-applying the provisions of this Act to his case.

and if a request as aforesaid be made by the Deputy Commissioner,

the Commissioner shall appoint a day for hearing the petitioner; and if he appears, either in person or by agent, on the day so appointed and on the subsequent day (if any) to which the hearing is adjourned, the Commissioner shall not pass any order in the matter until he has been heard.

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[1] Subs. by the A. O. 1950 for "Provincial Govt." which had been subs. by the A. O. 1937 for "Lieutenant-Governor".

(*IV.—Settlement of Debts. V.—Powers of Manager.*)

Secondly, if the said holder petitions the Board of Revenue, while any proceedings are pending before the Commissioner under proviso *first*, to postpone, until the petitioner has been heard, the passing of orders on any request that the Commissioner may make for the consent of the [1][State Government] to the re-application of the provisions of this Act to his case,

and if a request as aforesaid be made by the Commissioner,

the Board of Revenue shall appoint a day for hearing the petitioner; and if he appears, either in person or by agent, on the day so appointed, and on the subsequent day (if any) to which the hearing is adjourned, the Board shall not pass any order in the matter until he has been heard.

(*6*) No suit shall be brought to charge any person to whom property is restored under the circumstances mentioned in the first or the third clause of section 12—

(*i*) upon any promise, made after such restoration, to pay any debt contracted while the management of the property was vested in the Manager, or

(*ii*) upon any ratification, made after such restoration, of any promise or contract made while the management of the property was vested in the Manager,

whether or not there be any new consideration for such promise or ratification.]

V.—POWERS OF MANAGER.

Power to call for further particulars.

13. The manager may, from time to time, call for further and more detailed particulars of any claim preferred before him under this Act, any may at his discretion refuse to proceed with the investigation of the claim until such particulars are supplied.

Power to summon witnesses, and compel production of documents.

14. For the purposes of this Act the Manager may summon and enforce the attendance of witnesses and compel them to give evidence, and compel the production of documents by the same means, and, as far as possible, in the same manner, as is provided in the case of a Civil Court by the Code of Civil Procedure.[2]

Power to order production of title to tenures and

[3][**14A.** (*1*) The Manager may order all holders of tenures and under-tenures on property under his management to produce their evidence of title to such tenures and under-tenures.

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[1] Subs. by the A. O. 1950 for "Provincial Govt." which had been subs. by the A. O. 1937 for "Lieutenant-Governor".

[2] *See* now the Code of Civil Procedure, 1908 (5 of 1908).

[3] S. 14A ins. by the Chota Nagpur Encumbered Estates (Amendment) Act, 1909 (Ben. 3 of 1909), s. 13.

(V.—Powers of Manager.)

(2) (Any person who refuses to comply with an order of the Manager under sub-section (1) shall be liable, by order of the Deputy Commissioner, to a fine not exceeding five hundred rupees: under-tenures.

Provided that the Deputy Commissioner shall, before passing such order, hear any explanation or objection that may be made, by such person.

15. Every investigation conducted by the Manager with reference to any claim preferred before him under this Act, or to any matter connected with any such claim, shall be taken to be a judicial proceeding within the meaning of the Indian Penal Code. Investigation to be deemed a judicial proceedings.

XLV of 1860.

And every statement made by any person examined by or before the Manager with reference to such investigation, whether upon oath or otherwise, shall be taken to be evidence within the meaning of the same Code. Statements of persons examined to be evidence.

16. The Manager shall have, for the purpose of realizing and recovering the rents and profits of the said immovable property, the same powers as the holder of the property would have had for such purpose if this Act had not been passed. Manager to have powers of holder of estate.

And if such property, or any part thereof, be in the possession of any mortgagee or conditional vendee, the Manager may apply to the Court of the Deputy Commissioner within whose jurisdiction the property is situate, and such Court shall cause the same to be delivered to the Manager as if a decree therefor had been made in his favour, but without prejudice to the mortgagee or vendee preferring his claim under the provisions hereinbefore contained. Power to remove mortgagee or conditional vendee in possession.

17. Subject to the rules made under section 19, the Manager shall have power to demise all or any part of the property under his management for any term of years [1][or in perpetuity], to take effect in possession in consideration of any fine or fines, or without fine, and reserving such rents and under such conditions as may be agreed upon. Power to lease.

[2][**18.** After a scheme has been approved by the Commissioner under section [3][11A], the Manager shall, subject to the sanction of Commissioner, have power,— Power of Manager to raise money by mortgage, sale, or loan.

(*a*) to demise by way of mortgage the whole or any part of such property for a term not exceeding twenty years from the date of publication of the order under section 2, or

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[1] Subs. by the Chota Nagpur Encumbered Estates (Amendment) Act, 1884 (5 of 1884), s. 7, for "not exceeding twenty years absolute".

[2] Ss. 18, 18A and 18B subs. by the Chota Nagpur Encumbered Estates (Amendment) Act, 1909 (Ben. 3 of 1909), s. 14, for the original s. 18.

[3] Subs. by the Chota Nagpur Encumbered Estates (Amendment) Act, 1922 (B. and O. 8 of 1922), s. 5, for "11".

(*b*) to sell by public auction or by private contract, and upon such terms as the Manager thinks fit, such portion of such property as may appear expedient,

for the purpose of raising any money which may be required for the settlement of the debts and liabilities to which the holder of the property is subject, or with which such property or any part thereof is charged, or,

(*c*) to borrow money, at such rate of interest as appears reasonable to the Board of Revenue,

for the aforesaid purpose or for the purpose of meeting the costs of such repairs and improvements of the property as appear necessary to the Manager and are approved by the Commissioner.

Freedom from obligation to inquire into necessity for, or application of, money.

18A. (*1*) A mortgagee advancing money upon any mortgage made under section 18 shall not be bound to see that such money is wanted, or that no more than is wanted is raised.

(*2*) The receipt of the Manager for any moneys paid to him as such shall discharge the person paying the same therefrom and from being concerned to see to the application thereof.

Power of Manager to contract and take action for the benefit of the property.

18B. Subject to the sanction of the Commissioner, the Manager shall have power to enter upon any contract or to execute or relinquish any lease or counterpart of a lease, or to take any action not otherwise provided for in this Act which in his opinion is necessary for the proper care and management of the property.]

VI.—MISCELLANEOUS.

Power to make rules.

19. The [1][State Government] may [2]* * * * from time to time make rules, consistent with this Act, to regulate the following matters :—

(*a*) the security to be required from subordinate officers under this Act ;

[3][(*aa*) the classes of cases which may be submitted by the Commissioner for the consent of the [4][State Government] under section 2 ;]

(*b*) the notices to be given under this Act and the publication of such notices ;

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[1] Subs. by the A. O. 1950 for "Provincial Govt." which had been subs. by the A. O. 1937 for "Lieutenant-Governor of Bengal".

[2] The words "subject to the control of the G. G. in C.", ins. by the Decentralization Act, 1914 (4 of 1914), s. 2 and Sch. Pt. I, were rep. by the A. O. 1937.

[3] Ins. by the Chota Nagpur Encumbered Estates (Amendment) Act, 1884 (5 of 1884), s. 9.

[4] Subs. by the A. O. 1950 for "Provincial Govt." which had been subs. by the A. O. 1937 for "Lieutenant-Governor".

(*c*) the procedure to be followed in determining under section 8 the debts and liabilities due to creditors and other persons and in performing the other duties imposed on any officer by this Act ;

(*d*) the allowance of interest on each of the principal debts and liabilities so determined from the date on which it was incurred down to the date of the determination, and on the aggregate amount of such debts and liabilities from the date of the determination down to the date of payment;

(*e*) the order of paying debts and liabilities so determined; and, generally, for the guidance of officers in all matters connected with the enforcement of this Act.

Such rules, when [1]* * * published in the [2][Official Gazette], shall have the force of law.

Power to make orders as to education of holder's childern.

[3][**19A.** (*1*) The Commissioner may make such orders as to him may seem fit in respect of the education of any child of a holder whose property is being managed under the provisions of this Act otherwise than on the application of the Deputy Commissioner.

Penalty for disobedience.

(*2*) Any person who disobeys any order made by the Commissioner under sub-section (1) shall be liable, by order of the Deputy Commissioner, to a fine not exceeding five hundred rupees :

Provided that the Deputy Commissioner shall, before passing such order, hear any explanation or objection that may be made by such person.

Recovery of fines.

19B. Any fine imposed by the Deputy Commissioner under section 14A or section 19A shall be recoverable as an arrear of land-revenue.]

Power to appoint new Managers.

20. Whenever the Commissioner thinks fit, he may appoint any officer to be a Manager in the stead of any Manager appointed under this Act; and thereupon the property then vested under this Act in the former Manager shall become vested in the new Manager.

Every such new Manager shall have the same powers as if he had been originally appointed.

Managers to be public servants.

21. Every Manager appointed under this Act shall be deemed a public servant within the meaning of the Indian Penal Code

XLV of 1860.

Control by Board of Revenue.

[4][**21A.** All orders or proceedings of the Commissioner and of the Deputy Commissioner under this Act shall be subject to the supervision and control of the Board of Revenue; and the Board of Revenue may, if it thinks fit, revise, modify or reverse any such order or proceeding.

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[1] The words "approved by the G. G.-in-C. and" rep. by the Decentralization Act, 1914 (4 of 1914), s. 2 and the Sch., Pt. I.

[2] Subs. by the A. O. 1937 for "Calcutta Gazette".

[3] Ss. 19A and 19B ins. by the Chota Nagpur Encumbered Estates (Amendment) Act, 1909 (Ben. 3 of 1909), s. 15

[4] Ss. 21A and 21B ins. by s. 16, *ibid.*

Suits and appeals by and against holder, during management.

21B. During the period of management,—

(1) every suit or appeal by the holder shall be instituted in his name by the Manager;

(2) in every pending suit or appeal in which the holder is plaintiff or defendant, the Manager shall be named as the representative of the holder for the purposes of the suit or appeal ; and no application in any such suit or appeal shall be made to the Court on behalf of the holder except by the Manager;

(3) no person other than the Manager shall be ordered to sue or be sued as next friend or guardian, or be named as guardian, of the holder, for a pending suit ; and

(4) the Court, upon application by the Manager or by any party to a suit, may order that the plaint or memorandum of appeal be amended so as to conform with the requirements of clause (1), or that the Manager be named as the representative of the holder as required by clause (2) of this section :]

[1][Provided that, if in any suit or appeal both the plaintiff and defendant are holders of separate property managed by the same Manager, the Commissioner shall appoint for each holder an officer other than the Manager to be his representative for the purposes of such suit or appeal and references in this section to the Manager shall be deemed to be references to such representative.]

Bar of suits.

22. No suit or other proceeding shall be maintained against any person in respect of anything done by him *bona fide* pursuant to this Act.

Saving of jurisdiction of Courts in Chota Nagpur in respect of certain suits.

23. [2][Subject to the provisions of section 21B] nothing in this Act precludes the Courts in Chota Nagpur having jurisdiction in suits relating to the succession to, or claims of maintenance from, any immovable property brought under the operation of this Act from entertaining and disposing of such suits ; [3]* * * *

24. [*Act not to affect powers conferred by Bengal Act II of 1869.*] *Rep. by the Chota Nagpur Encumbered Estates (Amendment) Act, 1909 (Ben. Act III of 1909), s. 18.*

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[1] Proviso ins. by the Chota Nagpur Encumbered Estates (Amendment) Act, 1924 (B. and O. 2 of 1924), s. 2.

[2] Ins. by the Chota Nagpur Encumbered Estates (Amendment) Act, 1909 (Ben. 3 of 1909), s. 17.

[3] The words "but to all such suits the Manager of such property shall be made a party" rep. by s. 17, *ibid.*

THE NATIVE COINAGE ACT, 1876.

ACT No. IX of 1876.[1]

[*28th March 1876.*]

An Act to enable the Government of India to declare certain coins of [2][Indian States] to be a legal tender in [3][Part A States and Part C States.]

Preamble.

WHEREAS it is expedient to enable the [4][Central Government] to declare that a tender of payment of money, if made in certain coins made for or issued by [2][Indian States], shall be a legal tender in [3][Part A States and Part C States]; It is hereby enacted as follows :—

Short title.

1. This Act may be called the Native Coinage Act, 1876.

Local extent.

It extends to [5][the whole of India except Part B States].

[6]* * * *

2. [7][*Interpretation clause.*] *Rep. by the A. O. 1937.*

Power to declare that the coins of an Indian State or Part C State shall be legal tender.

3. Subject to the provisions of section 4, the [8][Central Government] may, from time to time, by notification in the [9][Official Gazette], declare that a tender of payment of money, if made in the coins, or the coins of any specified metal, made under this Act, for any [10][Indian State or Part B State], shall be a legal tender in [3][Part A States and Part C States],[11]

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[1] For the Statement of Objects and Reasons, *see* Gazette of India, 1876, Pt. V, p. 36; for Proceedings in Council, *see ibid.*, Supplement, pp. 178, 192 and 405.

This Act has been extended to Berar by the Berar Laws Act, 1941 (4 of 1941) and has been declared, by notification under s. 3 (*a*) of the Scheduled Districts Act, 1874 (14 of 1874), to be in force in the following Scheduled Districts, namely:—

The Districts of Hazaribagh Lohardaga and Manbhum, and Pargana Dhalbhum and the Kolhan in the District of Singbhum : *See* Gazette of India, 1881, Pt. I, p. 504. [The District of Lohardaga included at this time the present District of Palamau, which was separated in 1894; Lohardaga is now called the Ranchi District, Calcutta Gazette, 1899, Pt. I, p. 44].

[2] Subs. by the A. O. 1937 for "Native States".

[3] Subs. by the A. O. 1950 for "the Provinces" which had been subs. by the A. O. 1948 for "British India".

[4] Subs. by the A. O. 1948 for "G.G.-in-C.".

[5] Subs. by the A. O. 1950 for "all the Provinces of India" which had been subs. by the A. O. 1948 for "the whole of British India".

[6] The words "And it shall come into force at once" rep. by the Repealing and Amending Act, 1914 (10 of 1914).

[7] S. 2, which was rep. by the A. O. 1937, read : "In this Act 'Native State' means any State in India which is under the protection or political control of Her Majesty, or of which the Government shall have acknowledged the supremacy of the British Crown." For definition of "Indian State" *see* now the General Clauses Act, 1897 (10 of 1897), s. 3 (*30*).

[8] Subs. by the A. O. 1937 for "G. G.-in-C.".

[9] Subs. by the A. O. 1937 for "Gazette of India".

[10] Subs. by the A. O. 1950 for "Indian State" which had been subs. by the A. O. 1937 for "Native State".

[11] For notifications issued under this section in respect of certain coins of (1) the Alwar State, (2) the Bikaner State, (3) the Dhar State and (4) the Sailana State, *see* G. R. and O., Vol. II, pp. 24—33.

As to Bhopal coinage, *see* the Bhopal Coinage Act, 1897 (11 of 1897), rep. by the Amending Act, 1903 (1 of 1903).

and the provisions of the Indian Coinage Act, 1870[1], shall apply to the coins to which such notification refers, so far as such provisions are applicable thereto, and save as expressly provided by such notification. XXIII of 1870.

When such power may be exercised.

4. The power conferred by the first clause of section 3 shall be exercisable only when the coins referred to in such notification comply with the following conditions (that is to say)—

in the case of coins of gold, silver or bronze,

(*a*) their fineness is identical with that for the time being prescribed by law for coins of the [2][Central Government] of the same metal;

in the case of coins whether of gold, silver, bronze or copper,

(*b*) they are identical in weight with some coins of the [2][Central Government] of the same metal, which may for the time being be legally coined at any Mint of the [2][Central Government], or bear such relation thereto as is approved by the [3][Central Government];

(*c*) the devices upon their obverse and reverse differ from the devices on coins now made or issued by any such [4][Indian State or Part B State], and have been approved by the [3][Central Government];

(*d*) upon each of such coins its value in money of the [2][Central Government] is inscribed in the English language;

(*e*) the [4][Indian State or Part B State] for which they are coined has undertaken to abstain during a term of not less than thirty years from the date of the notification, from coining in its own Mint gold, silver, bronze, or copper, as the case may be, and has also undertaken that no coins resembling coins for the time being a legal tender in [5][Part A States and Part C States] shall, after the expiration of the said term, be struck under its authority or with its permission at any place within or without its jurisdiction;

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[1] *See* now the Indian Coinage Act, 1906 (3 of 1906).

[2] Subs. by the A. O. 1937 for "G. of I."

[3] Subs. by the A. O. 1937 for "G.G.-in-C.".

[4] Subs. by the A. O. 1950 for "Indian State" which had been subs. by the A. O 1937 for "Native State".

[5] Subs. by the A. O. 1950 for "the Provinces" which had been subs. by the A. O. 1948 for "British India".

(*f*) such State has formerly declared that a tender of payment of money, if made in coins of the [1][Central Government] of the same metal, shall, in the territories subject to such State, be a legal tender in the cases in which payment made in such coins would, under the law for the time being in force, be a legal tender in [2][Part A States and Part C States] ;

(*g*) such State has also agreed that the law and rules for the time being in force respecting the cutting and breaking of coin of the [1][Central Government] reduced in weight by reasonable wearing or otherwise, or counterfeit, or called in by proclamation, shall apply to the coins made for such State under this Act, and that it will defray the cost of cutting and breaking them ; and

(*h*) such State has also agreed not to issue the same coins below their nominal value, and not to allow any discount or other advantage to any person in order to bring them into circulation.

5. [*Indian States authorised to send metal to Mint in the Provinces for coinage.*]

6. [*Power to impose a charge for coinage.*]

7. [*Power to limit number of coins to be made under this Act for any Indian State.*]

Rep. by the A. O. 1950.

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[1] Subs. by the A. O. 1937 for "G. of I".

[2] Subs. by the A. O. 1950 for "the Provinces" which had been subs. by the A. O. 1948 for "British India".

THE BOMBAY REVENUE JURISDICTION ACT, 1876.

ACT No. X of 1876.[1]

[*28th March, 1876.*]

An Act to limit the jurisdiction of the Civil Courts throughout the Bombay Presidency in matters relating to the Land-revenue, and for other purposes.

Preamble.

WHEREAS in certain parts of the Presidency of Bombay the jurisdiction of the Civil Courts in matters connected with the land-revenue is more extensive than it is in the rest of the said Presidency ;

and whereas it is expedient that the jurisdiction of all the Civil Courts in the said Presidency should be limited in manner hereinafter appearing ;

and whereas it is also expedient to amend the Bombay Civil Courts Act, section 32, *and to revive certain provisions of the* [2]*thirteenth section of Regulation XVII of 1827 of the Bombay Code, which was repealed by the Land Improvement Act, 1871* [3]* * * * * ; XIV of 1869. XXVI of 1871.

It is hereby enacted as follows :—

Short title.

1. This Act may be called the Bombay Revenue Jurisdiction Act, 1876.

Commencement.

So much of section 4 as relates to claims to set aside, on the ground of irregularity, mistake or any other ground except fraud, sales for arrears of land-revenue, shall come into force on such [4]day as the Governor General in Council directs in that behalf by notification in the Gazette of India. The rest of this Act shall come into force on the passing thereof :

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[1] For Statement of Objects and Reasons, *see* Gazette of India, 1873, Pt. V, p. 534; for Preliminary Report of the Select Committee, *see ibid.*, 1874, Pt. V, p. 70; for further Report of the Select Committee, *see ibid.*, 1875, Pt. V, p. 210; and for Proceedings in Council, *see ibid.*, 1875, Supplement, p. 4, and *ibid.*, 1876, Supplement, pp. 344 and 405.

[2] S. 17 of this Act which revived s. 13 of Bom. Reg. 17 of 1827 was rep. by the Bombay Revenue Jurisdiction Act, 1880 (15 of 1880), except in scheduled districts to which the Bombay Land Revenue Code, 1879 (Bom. 5 of 1879), has not been extended; *see* s. 2 of Act 15 of 1880.

[3] The words "and to provide for the recovery by the Local Government of advances made for purposes other than those specified in section three of the Land Improvement Act, 1871" were rep. by the Repealing and Amending Act, 1894 (4 of 1894).

[4] The 19th September, 1881—*see* notification No. 197, dated 18th March, 1881, in Gazette of India, 1881, Pt. I, p. 92.

and it shall extend to [1][the ~~State of Bombay~~], but not so as to affect— Ex

(*a*) any suit regarding the assessment of revenue on land situate in the collectorate of Bombay, or the collection of such revenue ;

(*b*) any of the provisions of [2]Bombay Acts V of 1862 and VI of 1862, or of [3][Act XXI of 1881] or of Act XXIII of 1871 ,

[4]* * * * *

2. [*Repeal of enactments.*] *Rep by the Amending Act, 1891 (XII of 1891).*

3. In this Act, unless there be something repugnant in the subject or context,— Interpretation-clause.

"land" includes the sites of villages, towns and cities : it also includes trees, growing crops and grass, fruit upon, and juice in, trees, rights-of-way, ferries, fisheries and all other benefits to arise out of land, and things attached to the earth or permanently fastened to things attached to the earth :

"land-revenue" means all sums and payments, in money or in kind received or claimable by or on behalf [5][of the Government] from any person on account of any land held by or vested in him, and any cess or rate authorised [6][by the State Government] under the provisions of any law for the time being in force :

"Revenue-officer" means any officer employed in or about the business of the land-revenue, or of the surveys, assessment, accounts or records connected therewith.

4. Subject to the exceptions hereinafter appearing, no Civil Court shall exercise jurisdiction as to any of the following matters : Bar of certain suits.

(*a*) [7][claims against the Government] relating to any property appertaining to the office of any hereditary officer appointed or recognised under [8]Bombay Act No. III of 1874 or any other law for the time being in force, or of any other village-officer or servant, or

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[1] Subs. by the A. O. 1950 for "all the territories for the time being under the Government of the Governor of Bombay in Council". The words "for the time being" were rep. by the A. O. 1937.

[2] The names of the Acts are, respectively, the Bhagdari and Narvadari Act, 1862, the Ahmedabad Taluqdars Act, 1862, the Broach and Kaira Incumbered Estates Act, 1881 and the Pensions Act, 1871.

[3] Subs. by the Amending Act, 1891 (12 of 1891), for "Act XV of 1871".

[4] Cl. (*c*) rep. by the Repealing and Amending Act, 1895 (16 of 1895).

[5] Subs. by the A. O. 1950 for "of the Crown" which had been subs. by the A. O. 1937 for "of Govt.".

[6] Subs. by the A. O. 1950 for "by the Provincial Govt." which had been subs. by the A. O. 1937 for "by Govt.".

[7] Subs. by the A. O. 1950 for "claims against the Crown" which had been subs. by the A. O. 1937 for "claims against Govt.".

[8] The Bombay Hereditary Offices Act.

claims to perform the duties of any such officer or servant, or in respect of any injury caused by exclusion from such office or service, or

suits to set aside or avoid any order under the same Act or any other law relating to the same subject for the time being in force passed [1][by the State Government] or any officer duly authorized in that behalf, or

[2][claims against the Government] relating to lands held under treaty, or to lands granted or held as saranjam, or on other political tenure, or to lands declared [1][by the State Government] or any officer duly authorized in that behalf to be held for service;

(*b*) objections—

to the amount or incidence of any assessment of land-revenue authorized [1][by the State Government],or

to the mode of assessment, or to the principle on which such assessment is fixed, or

to the validity or effect of the notification of survey or settlement, or of any notification determining the period of settlement ;

(*c*) claims connected with or arising out of any proceedings for the realization of land-revenue or the rendering of assistance [1][by the State Government] or any officer duly authorized in that behalf to superior holders or occupants for the recovery of their dues from inferior holders or tenants ;

claims to set aside, on account of irregularity, mistake or any other ground except fraud, sales for arrears of land-revenue ;

(*d*) [2][claims against the Government]—

(1) to be entered in the revenue-survey or settlement-records or village-papers as liable for the land-revenue, or as superior holder, inferior holder, occupant or tenant, or

(2) to have any entry made in any record of a revenue-survey or settlement, or

(3) to have any such entry either omitted or amended ;

(*e*) the distribution of land or allotment of land-revenue on partition of any estate under [3]Bombay Act IV of 1868 or any other law for the time being in force ;

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[1] Subs. by the A. O. 1950 for "by the Provincial Govt." which had been subs. by the A. O. 1937 for "by Govt."

[2] Subs. by the A. O. 1950 for "claims against the Crown" which had been subs. by the A. O. 1937 for "claims against Govt."

[3] Bom. Act 4 of 1868 rep. by the Bombay Land-Revenue Code, 1879 (Bom. 5 of 1879), in areas in which the latter Act is in force.

(*f*) [1][claims against the Government]—

to hold land wholly or partially free from payment of land-revenue or to receive payments charged on or payable out of the land-revenue, or to set aside any cess or rate authorized [2][by the State Government] under the provisions of any law for the time being in force, or

respecting the occupation of waste or vacant land belonging [3][to the Government] ;

(*g*) claims regarding boundaries fixed under [4]Bombay Act No. 1 of 1865, or any other law for the time being in force, or to set aside any order passed by a competent officer under any such law with regard to boundary marks :

Provided that, if any person claim to hold wholly or partially exempt from payment of land-revenue under— Proviso.

(*h*) any enactment for the time being in force expressly creating an exemption not before existing in favour of an individual or of any class of persons, or expressly confirming such an exemption on the ground of its being shown in a public record, or of its having existed for a specified term of years, or

(*i*) an instrument or sanad given by or by order of the [5][State Government] under [6]Bombay Act No. II of 1863, section 1, clause first, or [7]Bombay Act No. VII of 1863, section 2, clause first, or

(*j*) any other written grant by the British Government expressly creating or confirming such exemption, or

(*k*) a judgment by a Court of law, or an adjudication duly passed by a competent officer under [4]Bombay Regulation XVII of 1827, Chapter X, or under [8]Act No. XI of 1852, which declares the particular property in dispute to be exempt,

such claim shall be cognizable in the Civil Courts.

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[1] Subs. by the A. O. 1950 for "claims against the Crown" which had been subs. by the A. O. 1937 for 'claims against Govt.".

[2] Subs. by the A. O. 1950 for "by the Provincial Govt." which had been subs. by the A. O. 1937 for "by Govt.".

[3] Subs. by the A. O. 1950 for "to the Crown" which had been subs. by the A. O. 1950 for "to Govt.".

[4] Bom. Act 1 of 1865 (except s. 37) and Bom. Reg. 17 of 1827 were rep. by the Bombay Land-revenue Code. 1879 (Bom. 5 of 1879), in areas in which the latter Act is in force.

[5] Subs. by the A. O. 1950 for "Provincial Govt." which had been subs. by the A. O. 1937 for "Governor of Bombay in Council".

[6] The Exemptions from Land-revenue (No. I) Act, 1863.

[7] The Exemptions from Land-revenue (No. II) Act, 1863.

[8] The Bombay Rent-free Estates Act, 1852.

Illustrations to (h).

(1) It is enacted that, in the event of the proprietary right in lands, the property of Government, being transferred to individuals, they shall be permitted to hold the lands for ever at the assessment at which they are transferred. The proprietary right in certain lands is transferred to A at an assessment of Rs. 100. An exemption from higher assessment not before existing is expressly created in favour of A by enactment, and he may seek relief in the Civil Court against over-assessment.

(2) It is enacted that, when a specific limit to assessment has been established and preserved, the assessment shall not exceed such specific limit. A is the owner of land worth Rs. 100 for assessment. He claims to be assessed at Rs. 50 only on the strength of a course of dealing with him and his predecessors under which his land has not been more highly assessed. There is no exemption not before existing created by enactment, and A's claim is not cognizable in a Civil Court.

(3) It is enacted that land-revenue shall not be leviable from any land held and entered in the land-registers as exempt. A claims to hold certain land as exempt on the ground that it has been so held by him, and is so entered in the land-register. This is an exemption expressly confirmed by enactment on the ground of its being shown in a public record, and A's claim is cognizable in a Civil Court.

(4) It is enacted that the Collector shall confirm existing exemptions of all lands shown in certain maps to be exempt. A claims exemption, alleging that his land is shown in the maps to be exempt. A's claim is cognizable in a Civil Court.

(5) It is enacted that assessment shall be fixed with reference to certain considerations and not with reference to others. This is not an enactment creating an exemption in favour of any individual or class, and no objection to an assessment under such an enactment is cognizable in a Civil Court.

Saving of certain suits.

5. Nothing in section 4 shall be held to prevent the Civil Courts from entertaining the following suits :

(*a*) suits [1][against the Government] to contest the amount claimed, or paid under protest, or recovered, as land-revenue, on the ground that such amount is in excess of the amount authorized in that behalf [2][by the State Government], or that such amount had, previous to such claim, payment or recovery, been satisfied, in whole or in part, or that the plaintiff, or the person whom he represents, is not the person liable for such amount ;

(*b*) suits between private parties for the purpose of establishing any private right, although it may be affected by any entry in any record of revenue-survey or settlement or in any village-papers ;

(*c*) suits between superior holders or occupants and inferior holders or tenants regarding the dues claimed or recovered from the latter;

and nothing in section 4, clause (*g*), shall be held to prevent the Civil Courts from entertaining suits, other than suits [1][against the Government], for possession of any land being a whole survey-number or a recognized share of a survey-number ;

[3][and nothing in section 4 shall be held to prevent the Civil Courts in the districts mentioned in the Second Schedule hereto annexed from

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[1] Subs. by the A. O. 1950 for "against the Crown" which had been subs. by the A. O. 1937 for "against Govt.".

[2] Subs. by the A. O. 1950 for "by the Provincial Government" which had been subs. by the A. O. 1937 for "by Govt.".

[3] Ins. by the Bombay Revenue Jurisdiction (Amendment) Act, 1877 (16 of 1877).

exercising such jurisdiction as, according to the terms of any law in force on the twenty-eighth day of March 1876, they could have exercised over claims [1][against the Government]—

(*a*) relating to any property appertaining to the office of any hereditary officer appointed or recognized under [2]Bombay Act No. III of 1874 or any other law for the time being in force, or of any other village-officer or servant :

(*b*) to hold land wholly or partially free from payment of land-revenue :

(*c*) to receive payments charged on, or payable out of, the land-revenue.]

Bar of certain suits against Revenue-officers.

6. Revenue-officers shall not be liable to be sued for damages in any Civil Court for any act *bona fide* done or ordered to be done by them as such in pursuance of the provisions of any law for the time being in force.

If any Revenue-officer absconds or does not attend when called on by his official superior, and if the Collector of the district proceeds against him or his sureties for public money, papers or property according to the provisions of any law for the time being in force, such Collector shall not be liable to pay damages or costs in any suit brought against him by such officer or sureties although it appears that a part only, or no part whatever, of the sum demanded was due from the officer so absconding or failing to attend, or that he was not in possession of the papers or property demanded of him.

Punishment or prosecution of Revenue-officers no bar to civil remedies.

7. Nothing in any law for the time being in force which authorizes the punishment departmentally of any Revenue-officer for any offence or breach of duty, or which sanctions his prosecution criminally for such offence or breach, shall be held to bar any remedy which may be had in the Civil Court against such officer.

8 to **10.** [*Suits against Revenue-officers. Appeals from their proceedings. Power for Local Government to call for record*] *Rep. by the Bombay Revenue Jurisdiction Act, 1880 (XV of 1880).*

Suits not to be entertained unless plaintiff has exhausted right of appeal.

11. No Civil Court shall entertain any suit [1][against the Government] on account of any act or omission of any Revenue-officer unless the plaintiff first proves that, previously to bringing his suit, he has presented all such appeals allowed by the law for the time being in force as, within the period of limitation allowed for bringing such suit, it was possible to present.

[1] Subs. by the A. O. 1950 for "against the Crown" which had been subs. by the A. O. 1937 for "against Govt.".

[2] The Bombay Hereditary Offices Act.

Power of Government to refer questions for decision of High Court

12. If, in the trial or investigation of any suit, claim or objection which, but for the passing of this Act, might have been tried or investigated by a Civil Court, there arises any question on which [1]* * * * * the [2][State Government] desires to have the decision of the High Court, [1]* * the [2][State Government] [3]* * may cause a statement of the question to be prepared, and may refer such question for the decision of the High Court of Judicature at Bombay.

The said High Court shall fix an early day for the hearing of the question referred, and cause notice of such day to be placed in the court-house.

The parties to the case may appear and be heard in the High Court in person or by their advocates or pleaders.

The High Court, when it has heard and considered the case, shall send a copy of its decision, with the reasons therefor, under the seal of the Court, to the Government by which the reference was made, and, subject to any appeal which may be presented to [4][the Supreme Court], the case shall be disposed of conformably to such decision

If the High Court considers that any such statement is imperfectly framed, the High Court may return it for amendment.

The costs (if any) consequent on any such reference shall be dealt with as the High Court in each case directs.

Power of Civil Judge to refer questions of jurisdiction to High Court.

13. If in any suit instituted, or in any appeal presented, in a Civil Court, the Judge doubts whether he is precluded by this Act from taking cognizance of the suit or appeal, he may refer the matter to the High Court.

The High Court may order the Judge making the reference either to proceed with the case or to return the plaint.

The order of the High Court on any such reference shall be subject to appeal to [4][the Supreme Court], and, save as aforesaid, shall be final

Composition of Bench.

14. Every reference under section 12 or section 13 shall be heard by a Bench consisting of such number of Judges, not less than three, as the Chief Justice from time to time directs.

15. [*Amendment of section 32 of Act XIV of 1869.*] *Rep. by the Repealing Act, 1938 (I of 1938), s. 2 and Sch.*

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[1] The words "the G. G. in C. or" rep. by the A. O. 1937.

[2] Subs by the A. O. 1950 for "Provincial Govt." which had been subs. by the A. O. 1937 for "L. G.".

[3] The words "as the case may be" rep. by the A. O. 1937.

[4] Subs. by the A. O. 1950 for "Her Majesty in Council".

[1][16. Whenever any suit is brought in any Court of a Subordinate Judge of the first class [2][against the [3][Government] [4]* * *], or against any Revenue Officer, [5][and the Crown [4]* * * undertakes] the defence thereof, it shall be lawful [6][for the State Government], by certificate signed by a Secretary thereto, to require that the trial of any such suit shall have precedence over the trial of any other suit or other civil proceeding then pending in the Court of the first class Subordinate Judge, or, if the suit is transferred, in the Court of the District Judge; and the Court shall give effect to every such requirement.

Privileges of Government in suits defended by it

The privilege conferred [7][on the State Government] by this section shall, *mutatis mutandis,* apply to any appeal or special appeal against any decree in any such suit as is described in this section.]

17. [*Revival of section 13 of Bom Reg XVII of 1827. Operation of Bom. Reg. XVII of 1827 in sites of villages and towns. Recovery of certain advances made by Local Government*] *Rep. by the Bombay Revenue Jurisdiction Act, 1880 (XV of 1880).*[8]

SCHEDULE.—[Enactments repealed.] Rep. by the Amending Act, 1891 (XII of 1891).

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[9][THE SECOND SCHEDULE

The district of Ahmedabad

The district of Kaira, exclusive of the Panch Mahals.

The district of Broach

The district of Surat, exclusive of the lapsed State of Mandv described in the Schedule annexed to [10]Act X of 1848.

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[1] Subs. by the Bombay Revenue Jurisdiction (Amendment) Act, 1929 (Bom. 21 of 1929), s. 2, for the original s. 16

[2] Subs. by the A. O. 1937 for "against Govt.".

[3] Subs. by the A. O. 1950 for "Crown".

[4] The words "or the Federal Railway Authority" rep. by the A. O. 1948.

[5] Subs. by the A. O. 1937 for "and the Govt. undertakes".

[6] Subs. by the A. O. 1950 for "for the Provincial Govt." which had been subs. by the A. O. 1937 for "for the Govt.".

[7] Subs. by the A. O. 1950 for "on the Provincial Govt." which had been subs. by the A. O. 1937 for "on Govt.".

[8] The repeal of the first cl. of s. 17 does not operate in any Scheduled District unless and until the Bombay Land Revenue Code, 1879 (Bom. 5 of 1879), has been extended to that district : *see* Act 15 of 1880, s. 2.

[9] Ins by the Bombay Revenue Jurisdiction (Amendment) Act, 1877 (16 of 1877). The Schedule is referred to in s. 5, *supra.*

[10] Act X of 1848 was rep. by the Amending Act, 1891 (12 of 1891)

The district of Tanna.

The district of Kolaba, exclusive of the lapsed State of Kolaba mentioned in [1]Act VIII of 1853.

The district of Ratnagiri.

The district of Kanara]

THE BOMBAY MUNICIPAL DEBENTURES ACT, 1876.

ACT No. XV OF 1876.[2]

[*14th September, 1876.*]

An Act to amend the law relating to the transfer of Bombay Municipal Debentures, and to provide for their consolidation.

Preamble. WHEREAS, under the [3]Bombay Municipal Act of 1865, the Justices of the Peace for the City of Bombay were empowered to mortgage for the purposes therein mentioned the rates and taxes imposed and levied under that Act ; Bom. II of 1865.

and whereas, by section 255 of the same Act, it was enacted that any person entitled to any such mortgage might transfer his right and interest therein to any other person, and that every such transfer should be by deed duly stamped, wherein the consideration should be truly stated, and that every such transfer might be according to the form in Schedule K to the said Act annexed or to the like effect ;

and whereas, in exercise of the said power, diverse mortgages of the said rates and taxes have been made, and the mortgagees have purported to transfer their mortgages to other persons, but such transfers have been by simple endorsement and not by deed duly stamped;

and whereas it is expedient to provide that such transfers may hereafter be made by endorsement, and to confirm the said transfers heretofore made, and to exempt the parties thereto from the penalties which they have incurred by reason of their failure to comply with the provisions of the said section and of the law relating to stamp-duties for the time being in force;

and whereas it is also expedient to provide for consolidating such mortgages in manner hereinafter mentioned and for renewing and subdividing mortgages to consolidated,

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[1] Act 8 of 1853 was rep. by the Amending Act, 1891 (12 of 1891).

[2] For Statement of Objects and Reasons, *see* Gazette of India, 1876, Pt. V, p 552, and for Proceedings in Council, *see ibid.*, Supplement, pp. 714, 753 and 1003.

[3] *See* now the City of Bombay Municipal Act, 1888 (Bom. 3 of 1888).

It is hereby enacted as follows:

1. This Act may be called the Bombay Municipal Debentures Act, 1876. **Short title.**

2. Every mortgage of rates and taxes, authorized to be made under the said [1]Bombay Municipal Act of 1865, or any subsequent Act, shall be transferable by endorsement on the instrument of mortgage [2]* * **Transfers of debentures to be by endorsement.**

Bom. II of 1865.

3. Every transfer of any such mortgage heretofore made by endorsement shall be, and be deemed to have been, as valid as if this Act had been in force at the date of such transfer; and no stamp-duty shall be, or be deemed to have been, chargeable in respect of any such transfer; and no penalty shall be deemed to have been incurred by reason of any failure to comply with the provisions of the said section 255 or of the law relating to stamp-duties for the time being in force. **Validation of former transfers by endorsement.**

4. Any holder of two or more such instruments of mortgage may surrender them to the Municipal Corporation of the City of Bombay, and such Corporation shall accept the same, and shall (on receipt for each such instrument of such fee as the said Corporation may from time to time prescribe) grant to such holder, under the seal of the said Corporation, an instrument of mortgage in which the consideration stated shall be the aggregate amount of the considerations respectively stated in the instrument so surrendered. **Power to consolidate debentures.**

Every instrument so granted may be in the form in the Schedule hereto annexed or to the like effect.

5. The said Corporation shall, on the application of the holder of any instrument granted under the said [1]Bombay Municipal Act of 1865 or under this Act, and, on receipt of such fees as the said Corporation may from time to time prescribe in this behalf, renew or sub-divide the same. **Power to renew and sub-divide.**

Bom. II of 1865.

THE SCHEDULE ABOVE REFERRED TO

WHEREAS A B of has surrendered to us, the Municipal Corporation of the City of Bombay, mortgages issued under the [1]Bombay Municipal Act of 1865, bearing respectively the following numbers and dates (namely) [*set them out*] and securing sums amounting in the whole to Rs. . In consideration of the premises, we, the

Bom. II of 1865.

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[1] *See* now the City of Bombay Municipal Act, 1888 (Bom. 3 of 1888).

[2] The words "and no such endorsement shall be chargeable with any stamp-duty", rep. by the Indian Stamp Act, 1879 (1 of 1879).

said Corporation, do hereby grant and assign unto the said A B, his representatives and assigns, such proportion of the rates and taxes comprised in the said mortgages as the said sum of Rs. bears to the whole sum for the time being borrowed upon the credit of the said rates and taxes. TO HOLD to the said A B, his representatives and assigns, from this day, until the said sum of Rs. with interest at the rate of per cent. per annum shall be fully paid and satisfied

Given under our corporate seal this day of 187

THE OUDH LAWS ACT, 1876.

CONTENTS.

PREAMBLE.

PART I.

PRELIMINARY.

SECTIONS.

1. Short title.
   Local extent
   Commencement
2. [*Repealed.*]

PART II.

GENERAL LAWS TO BE ADMINISTERED IN OUDH

3. Statutory law to be administered in Oudh.
4 Validity of local customs and mercantile usages

PART III.

CHAPTER I

DOWER AMONG MUHAMMADANS

5. Muhammadan dower-contracts how to be enforced
   Rule applicable after husband's death.

CHAPTER II.

PRE-EMPTION.

SECTIONS.

6. Right of pre-emption.
7. Presumption as to its existence.
8. Its existence in towns to be proved
9. Devolution of right when property to be sold or foreclosed is a proprietary or under-proprietary tenure.
9A. When a suit for pre-emption lies.
10. Notice to pre-emptors.
11. Loss of right of pre-emption.
12. Right of pre-emptor on foreclosure.
13. Suit to enforce right of pre-emption.
14. Decree to fix time for payment.
15. Effect of non-payment of purchase-money.

CHAPTER III.

PROCEDURE OF THE COURTS.

16. Rule of limitation.
17 and 18. [*Repealed.*]
19. Rules for taking evidence.
20. Execution-sale of ancestral and acquired property in land.
21 [*Repealed.*]
22. Service of process within jurisdiction of Lucknow Civil Court.
23 to 25. [*Repealed.*]
26. Revenue-agents authorized to appear, etc., in rent-suits.
27. Power to make rules for custody and sale of attached property.
28. [*Repealed.*]

CHAPTER IV

VILLAGE AND ROAD-POLICE.

29. Right to nominate village-policemen
30. Obligation to nominate.
31 Discretion to appoint or reject nominee.

SECTIONS.

32. Power to Government to appoint.
Procedure in case of rejection of nominee.
33. Appointment of road-police.
34. Duties of village and road-policeman.
35 Procedure on arrest by village or road-policeman.
36. Dismissal of village or road-policeman.
37. Acts punishable.
Penalty.
38. Fines to be credited to such fund as Government appoints.

CHAPTER V.

SUBSIDIARY RULES.

39. Power to make rules.
40. Publication of rules.
41 [*Repealed.*]
42 Penalty for breach of rules.

CHAPTER VI.

MISCELLANEOUS.

Honorary Civil Jurisdiction.

43. [*Repealed.*]

Honorary Police-officers.

44. Honorary Police-officers.

Creation and Alteration of Districts and Sub-divisions.

45. [*Repealed.*]

THE FIRST SCHEDULE. [*Repealed.*]
THE SECOND SCHEDULE.

(*Part I.—Preliminary. Part II.—General Laws to be administered in Oudh.*)

ACT No. XVIII of 1876.[1]

[*10th October, 1876.*]

An Act to declare and amend the laws to be administered in Oudh

WHEREAS it is expedient to declare and amend the laws to be administered in Oudh; It is hereby enacted as follows:— Preamble.

PART I.

PRELIMINARY.

1. This Act may be called the Oudh Laws Act, 1876. Short title.

It extends only to [2]* * * Oudh; Local extent.

and it shall come into force on the passing thereof. Commencement.

2. [*Repeal of enactments.*] *Rep. by the Repealing Act, 1938 (I of 1938), s. 2 and Sch.*

PART II.

GENERAL LAWS TO BE ADMINISTERED IN OUDH

[3]**3.** The law to be administered by the Courts of Oudh shall be as follows :— Statutory law to be administered in Oudh

(*a*) the laws for the time being in force regulating the assessment and collection of land-revenue :

(*b*) in questions regarding succession, special property of females, betrothal, marriage, divorce, dower, adoption, guardianship,

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[1] For Statement of Objects and Reasons, *see* Gazette of India, 1873, Pt. V, p. 493 ; for Report of the Select Committee, *see ibid*. 1876. Pt. V, p. 710 and for Proceedings in Council, *see ibid.*, 1871, Supplement, p. 1007; *ibid.*, 1873, Extra Supplement, p. 17; *ibid.*, 1876, Supplement, pp. 821, 1085 and 1097.

The Act has been amended in U. P. by U. P. Act 15 of 1939.

[2] The words "the territories for the time being administered by the Chief Commissioner of" rep. by the A. O. 1937.

[3] The provisions of this section have been rep. in so far as they are inconsistent with the Muslim Personal Law (*Shariat*) Application Act, 1937 (26 of 1937); *see* s. 6 of that Act.

minority, bastardy, family-relations, wills, legacies, gifts, partitions, or any religious usage or institution, the rule of decision shall be—

(1) any custom applicable to the parties concerned which is not contrary to justice, equity or good conscience, and has not been, by this or any other enactment, altered or abolished, and has not been declared to be void by any competent authority ;

(2) the Muhammadan law in cases where the parties are Muhammadans, and the Hindu law in cases where the parties are Hindus, except in so far as such law has been, by this or any other enactment, altered or abolished, or has been modified by any such custom as is above referred to :

(*c*) the rules contained in this Act:

(*d*) the rules published in the [1][Official Gazette] as provided by section 40, or made under any other Act for the time being in force in Oudh :

(*e*) the Regulations and Acts specified in the second schedule hereto annexed, subject to the provisions of section 4, and to the modifications mentioned in the third column of the same schedule :

(*f*) subject to the modifications hereinafter mentioned, all enactments for the time being in force and expressly, or by necessary implication, applying to [2][Part A States and Part C States] or Oudh, or some part of Oudh:

(*g*) in cases not provided for by the former part of this section, or by any other law for the time being in force, the Courts shall act according to justice, equity and good conscience.

Validity of local customs and mercantile usages.

4. All local customs and mercantile usages shall be regarded as valid, unless they are contrary to justice, equity or good conscience, or have, before the passing of this Act, been declared to be void by any competent authority.

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[1] Subs. by the A. O. 1937 for "local official Gazette".

[2] Subs. by the A. O. 1950 for "the Provinces" which had been subs. by the A. O. 1948 for "British India."

(Part III Chapter I.—Dower among Muhammadans. Chapter II.—Pre-emption.)

PART III

CHAPTER I.

DOWER AMONG MUHAMMADANS.

5. Where the amount of dower stipulated for in any contract of dower by a Muhammadan is excessive with reference to the means of the husband, the entire sum provided in the contract shall not be awarded in any suit by decree in favour of the plaintiff, or by allowing it by way of set-off, lien or otherwise to the defendant; but the amount of the dower to be allowed by the Court shall be reasonable with reference to the means of the husband and the status of the wife.

Muhammadan dower contracts how to be enforced.

This rule shall be applicable whether the suit to enforce the contract be brought in the husband's life time or after his death

Rule applicable after husband's death.

CHAPTER II

PRE-EMPTION.

6. The right of pre-emption is a right of the persons hereinafter mentioned or referred to, to acquire, in the cases hereinafter specified, immovable property in preference to all other persons.

Right of pre-emption.

7. Unless the existence of any custom or contract to the contrary is proved, such right shall, whether recorded in the settlement-record or not, be presumed—

Presumtion as to its existence.

(*a*) to exist in all village-communities, however constituted, and whether proprietary or under-proprietary, and in the cases referred to in section 40 of the Oudh Land-revenue Act,[1] and

XVII of 1876

(*b*) to extend to the village-site, to the houses built upon it, to all lands and shares of lands within the village-boundary, and to all transferable rights affecting such lands.

8. The right of pre-emption shall not be presumed to exist in any town or city, or any sub-division thereof, but may be shown to exist therein and to be exercisable therein by such persons and under such circumstances as the local custom prescribes.

Its existence in towns to be proved

9. If the property to be sold or foreclosed is a proprietary or under-proprietary tenure, or a share of such a tenure, the right to buy or redeem such property belongs, in the absence of a custom to the contrary,—

Devolution of right when property to be sold or foreclosed is a proprietary or under-proprietary tenure.

1st, to co-sharers of the sub-division (if any) of the tenure in which the property is comprised, in order of their relationship to the vendor or mortgagor ;

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[1] See now the U. P. Land Revenue Act, 1901 (U. P. 3 of 1901).

2ndly, to co-sharers of the whole mahal in the same order ;

3rdly, to any member of the village-community; and

4thly, if the property be an under-proprietary tenure, to the proprietor.

Where two or more persons are equally entitled to such right, the person to exercise the same shall be determined by lot.

When a suit for pre-emption lies

[1][**9A.** No suit shall lie for enforcing a right of pre-emption under this Act in respect of a portion only of the property sold or foreclosed :

Provided that, where the plaintiff has a right of pre-emption in respect of only a portion of the property sold or foreclosed, then notwithstanding anything to the contrary contained in any enactment a suit for the pre-emption of that portion only shall lie and the plaintiff shall have to pay the proportionate price or the proportionate amount due in respect of such mortgage for such portion of the property, as the case may be.]

Notice to pre-emptors.

10. When any person proposes to sell any property, or when he forecloses a mortgage upon any property, in respect of which any persons have a right of pre-emption, he shall give notice to the persons concerned of the price at which he is willing to sell such property, or of the amount due in respect of such mortgage, as the case may be.

[2][Provided that, where a person has a right of pre-emption in respect of a portion only of the property proposed to be sold or foreclosed, the notice to such person shall specify the proportionate amount of the price or the proportionate amount due in respect of such mortgage at which the person proposing to sell or foreclose is willing to sell or redeem such portion of the property, as the case may be.]

Such notice shall be given through the Court within the local limits of whose jurisdiction the property or any part thereof is situate, and shall be deemed sufficiently given if it be stuck up on the chaupal or other public place of the village or city in which the property is situate.

Loss of right of pre-emption.

11. Any person having a right of pre-emption in respect of any property proposed to be sold shall lose such right, unless within three months from the date of such notice he or his agent pays or tenders the price [3][specified in the notice given under the preceding section] to the person so proposing to sell.

Right of pre emptor on foreclosure.

12. When the right of pre-emption arises in respect of the fore-closure of a mortgage [4][or a portion of the mortgage], any person entitled to such right may, at any time within three months after the giving of the notice required by section 10, pay or tender to the mortgagee or his successor in title the amount specified in such notice, and shall thereupon acquire a right to purchase the property, [4][or a portion thereof, as the case may be].

On completion of the purchase the person exercising the right of pre-emption shall be bound to pay to the mortgagee or his successor in title the amount specified in such notice, together with interest on the

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[1] S. 9A ins. by the Oudh Laws (Amendment) Act, 1939 (U. P. 15 of 1939), s. 2.

[2] The proviso ins. by s. 3, *ibid.*

[3] Subs. by s. 4, *ibid.*, for "aforesaid".

[4] Ins. by s. 5, *ibid.*

principal sum secured by the mortgage [1][or the proportionate amount of such principal sum in respect of the portion of the property in which he possesses the right of pre-emption, as the case may be], at the rate specified by the instrument of mortgage, for any time which has elapsed since the date of the notice, and any additional costs which may have been properly incurred by the mortgagee or his successor in title.

Suit to enforce right of pre-emption.

13. Any person entitled to a right of pre-emption may bring a suit to enforce such right on any of the following grounds (namely) :—

(*a*) that no due notice was given as required by section 10;

(*b*) that tender was made under section 11 or section 12 and refused;

(*c*) in the case of a sale, that the price stated in the notice was not fixed in good faith;

(*d*) in the case of a mortgage, that the amount claimed by the mortgagee was not really due on the footing of the mortgage and was not claimed in good faith, and that it exceeds the fair market-value of the property mortgaged, [2][or the portion of the property mortgaged in respect of which he possesses the right of pre-emption, as the case may be].

If, in the case of a sale, the Court finds that the price was not fixed in good faith, the Court shall fix such price as appears to it to be the fair market-value of the property sold, [2][or the portion of the property sold in respect of which he possesses the right of pre-emption, as the case may be.]

If, in the case of a mortgage, the Court finds that the amount claimed by the mortgagee was not really due on the footing of the mortgage, and that it was not claimed in good faith and that it exceeds the fair market-value of the property mortgaged [2][or the portion of the property mortgaged in respect of which he possesses the right of pre-emption, as the case may be], the amount to be paid to the mortgagee shall not exceed what the Court finds to be such market-value.

Decree to fix time for payment.

14. If the Court find for the plaintiff, the decree shall specify a day on or before which the purchase-money or the amount to be paid to the mortgagee shall be paid.

Effect of non-payment of purchase-money.

15. If such purchase--money or amount is not paid into Court before it rises on that day, the decree shall become void, and the plaintiff shall, so far only as relates to such sale or mortgage, lose his right of pre-emption over the property to which the decree relates.

CHAPTER III.

PROCEDURE OF THE COURTS.

Rule of limitation.

16. The Judicial Commissioner's Circular No. 104 of July, 1860, shall be held to have been a notification within the meaning of section 24 of Act XIV of 1859,[3] and such Act shall be deemed to have been in force

[1] Ins. by the Oudh Laws (Amendment) Act, 1939 (U. P. 15 of 1939), s. 5.
[2] Ins., *ibid.*, s. 6.
[3] *See* now the Limitation Act, 1908 (9 of 1908).

in Oudh from the fourth day of July, 1862; and all orders and decrees passed under the rules contained in the said Circular, or under the said Act, shall be deemed to have been passed under a law in force for the time being.

Nothing in this section affects the provisions of sections 102, 104, 105, 106, 107 and 108 of the Oudh Rent Act (XIX of 1868)[1] with regard to the limitation of suits under that Act.

17. [*Act XXXII of 1871, s. 28, to cease in any district from date of notification that it is no longer under settlement.*] *Rep. by the Amending Act, 1891* (*XII of* 1891).

18. [*Recognized agents.*] *Rep. by the Amending Act, 1891,* (*XII of 1891*).

Rules for taking evidence.

19. [2]Section 172 of Act No. VIII of 1859 is hereby repealed, so far as the province of Oudh is concerned, and the following section is substituted therefor :—

"On the day appointed for the hearing of the suit, or on some other day to which the hearing may be adjourned, the evidence of the witnesses in attendance shall be taken orally in open Court in the presence and hearing and under the personal direction and superintendence of the Judge.

"A note of the essential points of the evidence of each witness is to be taken at the time, and in the course of oral examination, by the officer who tries the case, in his own language, or in English if he is sufficiently acquainted with that language, and such note shall be filed, and shall form part of the record of the case.

"If the evidence be taken down in a different language from that in which it has been given, and the witness does not understand the language in which it is taken down, the witness may require his deposition as taken down to be interpreted to him in the language in which it was given.

"It shall be in the discretion of the Court to take down, or cause to be taken down, any particular question and answer, if there appear any special reason for so doing, or any party or his pleader requires it.

"If any question put to a witness be objected to by either of the parties or their pleaders, and the Court allow the same to be put, the question and the answer shall be taken down, and the objection and the name of the party making it shall be noticed in taking down the depositions, together with the decision of the Court upon the objection.

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[1] Act 19 of 1868 was rep. by the Oudh Rent Act, 1886 (22 of 1886), s. 2, Act 22 of 1886 has been rep. by the U. P. Tenancy Act, 1939 (U. P. 17 of 1939).

[2] *See* now ss. 181 to 190, both inclusive, of the Code of Civil Procedure, 1908 (5 of 1908).

(Part III. Chapter III.—Procedure of the Courts.)

"The Court shall record such remarks as it may think material respecting the demeanour of the witness while under examination

"If the Judge be prevented from making a note as above required, he shall record the reason of his inability to do so, and shall cause such note to be made in writing from his dictation in open Court, and shall sign the same, and such note shall form part of the record."

V of 1908.

[1][**20.** So much of section 60 of the Code of Civil Procedure, 1908, as renders land liable to sale in execution of a decree shall be subject to the following restriction:—No ancestral land shall be sold in satisfaction of a decree without the permission of the [2][State Government].

Execution-sale of ancestral and acquired property in land.

Explanation.—In this section the words "ancestral land" mean—

(*a*) land forming a mahal or share in or portion of a mahal, which has been owned continuously from the conclusion of the first regular settlement by the proprietor, which term shall include an under-proprietor as defined in section 4, clause (15), of the United Provinces Land Revenue Act, 1901, or by the person or persons from whom such proprietor has directly or indirectly inherited such land :

U. P. III of 1901.

(*b*) land forming an estate or part of an estate as defined in the Oudh Estates Act, 1869 ;

I of 1869.

(*c*) land conferred by the British Government as a reward for services rendered to the State on the owner or on a person from whom such owner has directly or indirectly inherited such land; or

(*d*) the interest of the holder of a grant of land revenue conferred by the British or any former Government on him or on a person from whom he has directly or indirectly inherited such interest.]

21. [*Appointment of manager of land attached.*] *Rep. by the Oudh Civil Courts Act, 1879 (XIII of 1879).*

22. Notwithstanding anything contained in the said Code, any Civil Court sitting within the local limits of the jurisdiction of the Lucknow Civil Court, but exercising jurisdiction beyond such limits, may cause summonses, warrants, notices and other processes to be served within the local limits

Service of process within jurisdiction of Lucknow Civil Court

[1] Subs. by the Oudh Laws (Amendment) Act, 1912 (U. P. 3 of 1912), s. 2, for the original section.

[2] Subs. by the A. O. 1950 for "Provincial Govt." which had been subs. by the A. O. 1937 for "Lieutenant-Governor".

of the jurisdiction of the Lucknow Civil Court without causing the same processes to be served through such Court.

23. [*Section substituted for Act XIX of 1868, s. 109.*] *Rep. by the Oudh Rent Act, 1886 (XXII of 1886).*

24. [*Section substituted for Act XIX of 1868, s. 118*] *Rep. by the Oudh Rent Act, 1886 (XXII of 1886).*

25. [*Right of occupancy in judgment-debtor's sir-land.*] *Rep. by the Oudh Rent Act, 1886, Amendment Act, 1901 (U. P. IV of 1901).*

Revenue Agents authorized to appear, &c., in rent-suits.

26. Notwithstanding anything contained in Act No. XX of 1865[1], all persons duly admitted and enrolled as Revenue-agents under that Act in [2]* * * Oudh may appear, plead and act in suits under the Oudh Rent Act[3] in the Courts of officers exercising the powers of Assistant Collectors, Deputy Collectors, Collectors and Commissioners under the same Act. XIX of 1868.

Power to make rules for custody and sale of attached property.

27. With the sanction of the [4][State Government], the [5][High Court] may from time to time make rules consistent with this Act and with the Code of Civil Procedure[6]—

(*a*) for the custody and sale of moveable property attached in execution of decrees;

(*b*) for the levy of a fee or commission on the sale of attached property and the disposal of the funds accruing from such fees;

(*c*) as to the appointment and remuneration of persons [7][(not being persons in the service of the [8][Government]))] by whom property is to be attached, kept in custody and sold;

(*d*) as to the appointment and remuneration of persons [7][(not being persons in the service of the [8][Government]))] by whom local investigations under section 180, and investigations and adjustments of accounts under section 181, of the Code of Civil Procedure[9] are to be made.

28. [*Power to revise decrees and orders of subordinate Courts.*] *Rep. by the Oudh Civil Courts Act, 1879 (XIII of 1879).*

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[1] *See* now the Legal Practitioners Act, 1879 (18 of 1879).

[2] The words "the territories for the time being under the administration of the Chief Commissioner of " rep. by the A. O. 1937.

[3] *See* now the U. P. Tenancy Act, 1939 (U. P. 17 of 1939).

[4] Subs. by the A. O. 1950 for "Provincial Govt." which had been subs. by the A. O. 1937 for "Chief Commissioner".

[5] Subs. by the A. O. 1950 for "Chief Court" which had been subs. by the Oudh Courts Act, 1925 (U. P. 4 of 1925), s. 49 and Sch. I, for "Judicial Commissioner".

[6] *See* now the Code of Civil Procedure, 1908 (5 of 1908).

[7] Ins. by the A. O. 1937.

[8] Subs. by the A. O. 1950 for "Crown".

[9] *See* now the Code of Civil Procedure, 1908 (5 of 1908), Sch. I, Order XXVI, rules 9 to 12.

CHAPTER IV.

VILLAGE AND ROAD-POLICE

29. The nomination to the post of village-policeman shall be made by the zamindar of the village, or, where there are more zamindars than one, by the lambardar as their representative; and, where there are more lambardars than one, the opinion of the majority (unless there is some special provision to the contrary in the village administration-paper) shall prevail. Right to nominate village-policemen.

30. Every person authorized to nominate to the office of village-policeman shall, within fifteen days after the occurrence of a vacancy in such office, nominate a proper person to the vacant post, and communicate the nomination to the Magistrate of the district. Obligation to nominate.

31. The person so nominated shall, after due enquiry into his age, character and ability, be appointed or rejected [1][by the State Government]. Discretion to appoint or reject nominee.

32. In default of such nomination within the said fifteen days, the [2][State Government] shall appoint such person as [3][it] thinks fit to the vacancy. Power to Government to appoint

If the nomination has been made within the said fifteen days, but the nominee is rejected, the person authorized to nominate shall, within fifteen days from the date of such rejection, nominate another person to the vacant post; and in default of such nomination, or if such nomination has been made but the nominee is again rejected, the [2][State Government] shall appoint such person as [3][it] thinks fit to the vacancy. Procedure in case of rejection of nominee.

33. Subject to the rules to be framed under section 39 and for the time being in force, the [2][State Government] may from time to time appoint persons to be [4][road-police]. Appointment of road-police.

34. Every village-policeman and every road-policeman shall perform the following duties:— Duties of village and road-policemen.

(*a*) he shall give immediate information to the officer in charge of the police-station appointed for his village or beat—

(1) of every unnatural, suspicious or sudden death occurring in the village of which he is chaukidar, or within his beat;

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[1] Subs. by the A. O. 1950 for "by the Provincial Govt." which had been subs. by the A. O. 1937 for "at discretion by such Magistrate, or by some officer authorized by him in that behalf".

[2] Subs. by the A. O. 1950 for "Provincial Govt." which had been subs. by the A. O. 1937 for "Magistrate of the district".

[3] Subs. by the A. O. 1937 for "he".

[4] Subs. by the A. O. 1937 for "the road-police of his district".

(*Part III. Chapter IV.—Village and Road-Police*).

(2) of each of the following offences occurring in such village or on such beat (that is to say), murder, culpable homicide, rape, dacoity, theft, robbery, mischief by fire, house-breaking, counterfeiting coin, causing grievous hurt, riot, harbouring a proclaimed offender, exposure of a child, concealment of birth, administering stupefying drugs, kidnapping, lurking house-trespass; and

(3) of all attempts and preparations to commit, and abetments of, any of the said offences:

(*b*) he shall keep the police informed of all disputes which are likely to lead to any riot or serious affray :

(*c*) he shall arrest all proclaimed offenders, and all persons whom he may find in the act of committing any offence specified in paragraph (*a*), clause (*2*), of this section :

(*d*) he shall observe and from time to time report to the officer in charge of the police-station within the jurisdiction of which his village or beat may be situate, the movements of all bad characters in or on such village or beat :

(*e*) he shall report to the officer in charge of such police-station the arrival of suspicious characters in the neighbourhood :

(*f*) he shall supply to the best of his ability any local information which a Magistrate or any officer of police may require, and shall promptly execute all orders issued to him by competent authority.

Procedure on arrest by village or road-policeman.

35. Whenever a village-policeman or road-policeman arrests any person, he shall take him as soon as possible to the police-station within the jurisdiction of which his village or beat is situate.

Dismissal of village or road-policeman.

36. The Magistrate of the district may dismiss any village-policeman or road-policeman for any misconduct or neglect of duty.

Where any village-policeman is guilty of neglect of duty or other misconduct, the person authorized to nominate to his office may report him for dismissal to the Magistrate of the district; and such Magistrate shall dismiss him accordingly, unless the Magistrate has reason to think that such dismissal would be improper.

Acts punishable.

37. Every village-policeman and road-policeman guilty of any wilful misconduct in his office, or of neglect of duty, such misconduct or neglect not being an offence within the meaning of the Indian Penal Code, XLV of 1860.

or withdrawing from the duties of his office without permission and without having given at least two months' notice of his intention to withdraw from such duties to the persons authorized to nominate or appoint under sections 29, 32 and 33 (as the case may be),

or offering any unnecessary personal violence to any person in his custody,

shall be liable, on conviction before a Magistrate, to a penalty not exceeding three months' pay, or to imprisonment for a period not exceeding three months, or to both. **Penalty.**

38. All fines levied under this Act on village-policemen or road-policemen shall be credited to such fund as the [1][State Government] from time to time appoints. **Fines to be credited to such fund as Government appoints.**

CHAPTER V

SUBSIDIARY RULES

39. The [2][State Government] may, from time to time, [3]* * * * * make rules consistent with this Act as to— **Power to make rules.**

(*a*) the discipline and remuneration of the village and road-police and the regulation of their number, location and duties;

(*b*) the disposal of unclaimed property under Act. No. V of 1861 (*for the regulation of Police*), sections 25, 26 and 27;

(*c*) public health and conservancy at fairs and other large public assemblies, and the maintenance of a proper watch and ward at such fairs and assemblies;

(*d*) imposing [4]* * * * taxes for those purposes only;

[5][(*e*) the keeping and custody of civil, criminal and revenue records.]

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[1] Subs. by the A. O. 1950 for "Provincial Govt." which had been subs. by the A. O. 1937 for "L. G.".

[2] Subs. by the A. O. 1950 for "Provincial Govt." which had been subs. by the A. O. 1937 for "Chief Commissioner".

[3] The words "with the previous sanction of the G. G. in C." rep. by the U. P. Assimilation of Powers Act (14 of 1878), s. 5.

[4] The words "with the previous sanction of the G. G. in C." rep. by the A. O. 1937.

[5] Subs. by the A. O. 1937 for the original cl. (*e*).

(*Part III. Chapter V.—Subsidiary Rules. Chapter VI.—Miscellaneous.*)

[1]* * * * *

Publication of rules.

40. All rules made by the [2][State Government] under section 39, and all rules made by the [3][High Court] under section 27, shall be published in the [4][Official Gazette], and shall thereupon have the force of law.

41. [*Continuance of prior rules as to matters for which rules may be made under the Act.*] *Rep. by the Amending Act, 1891 (XII of 1891).*

Penalty for breach of rules.

42. Whoever breaks any rule made or continued under this Act, not being a rule made by the [3][High Court], shall, on conviction before a Magistrate, be punishable with fine which may extend to fifty rupees, or with imprisonment for a term which may extend to six months, or with both.

CHAPTER VI.

MISCELLANEOUS.

Honorary Civil Jurisdiction.

43. [*Power to invest taluqdars with civil jurisdiction.*] *Rep. by the Oudh Civil Courts Act, 1879 (XIII of 1879.)*

Honorary Police-officers.

Honorary police-officers.

44. The [2][State Government] may, from time to time, confer on any person whom [5][it] thinks fit any power which may be exercised by a police-officer under any Act for the time being in force, and withdraw any power so conferred.

Creation and Alteration of Districts and Sub-divisions.

45. [*Power to create new districts. Power to form sub-divisions of districts.*] *Rep. by the United Provinces Act. 1890 (XX of 1890), s. 35.*

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[1] Cl. (*f*) relating to the appointment. duties, punishment and dismissal of certain ministerial officers was rep. by the A. O. 1937, in view of s. 241 (*2*) (*b*) of the G. of I. Act, 1935. Cl. (*g*) relating to s. 25 of this Act was rep. by the Oudh Rent Act, 1886, Amendment Act, 1901 (U. P. 4 of 1901). The proviso that the previous sanction of the G. G. in C. under cl. (*d*) shall not be necessary in the case of certain taxes, was rep. by the A. O. 1937.

[2] Subs. by the A. O. 1950 for "Provincial Govt." which had been subs. by the A. O. 1937 for "Chief Commissioner".

[3] Subs. by the A. O. 1950 for "Chief Court" which had been subs. by the Oudh Courts Act, 1925 (U. P. 4 of 1925), s. 49 and Sch. I, for "Judicial Commissioner".

[4] Subs. by the A. O. 1937 for "local official Gazette".

[5] Subs. by the A. O. 1937 for "he".

(*The First Schedule. The Second Schedule.*)

THE FIRST SCHEDULE.—Rep. by the Repealing Act, 1938 (I of 1938), s. 2 and Sch.

THE SECOND SCHEDULE.

(*See section 3.*)

PART I.—BENGAL REGULATIONS.

Number and year.	Subject.	Modifications.
XXIII of 1803 .	Embezzlement by Native Officers.	In section 1 and in section 2, clause *First, before* "sezawals," *insert* "tahsildars". In section 2, *after* the first clause, *insert* "*Second.*—The responsibility of the sureties of tahsildars extends to the several cases provided for in this Regulation." In section 3, *for* "Dewanny Adawlut of the Zillah, the Judge of which Court shall detain him," *read* "District where he shall be detained;" *for* "real or personal," *read* "movable or immovable;"[1] * * * * * and *omit* the words and figures "and the rules in Regulation XXVII, 1803, regarding suits so carried on by the Collectors are to be held applicable to it.'[2] * * * * *. *Omit* section 8.
[3]X of 1804 .	Punishment by Courts martial of certain State offences.	*Omit* section 1. In section 2, *for* "the British territories subject to the Government of the Presidency of Fort William" *read* "the territories under the administration of the Chief Commissioner of Oudh". In section 3, *for* "*real* and personal" *read* "movable or immovable".
XI of 1806 .	Assistance to troops and travellers passing through districts.	*Omit* sections 1, 7, 9 to 20 (both inclusive), and so much of the rest of the Regulation as authorizes Collectors and their Native officers, or Magistrates and their Police-officers, to give their official aid in procuring coolies for the purpose of facilitating the march of troops or the progress of travellers. *For* "Collectors of Revenue" and "Collector" *read* "Deputy Commissioner" throughout the Regulation.

[1] The words "*for* 'city' *read* 'jurisdiction'" were rep. by the Amending Act, 1891 (12 of 1891); and the words "*for* 'Board of Revenue' *read* 'Chief Commissioner'" were rep. by the United Provinces Act, 1890 (20 of 1890), s. 35.

[2] The words "In section 4, *omit* the words 'or in either of the cities of Patna, Dacca and Moorshedabad'" were rep. by the Amending Act, 1891 (12 of 1891).

[3] Rep. by the Special Laws Repeal Act, 1922 (4 of 1922), s. 3 and Sch.

(*The Second Schedule.*)

PART I.—BENGAL REGULATIONS—*continued.*

Number and year.	Subject.	Modifications.
		In sections 2 and 3, *for* "the Company's territories" *read* "Oudh". In section 2, *omit* the last sentence. In section 4, clause *Third*, *for* "[1][Central Government]" *read* "[2][Provincial Government]". In section 5, *omit* "the Company's ; [3] * * In section 6, *for* "Magistrate" *read* "Deputy Commissioner," and *for* "on the part of the Collector" *read* "by the Deputy Commissioner". In section 8, *for* "the Company's provinces' *read* "Oudh" [4] * * *.
[5] * * *	* * *	* * *
III of 1818	State Prisoners	In section 1, *omit* "situated within the territories dependent on the Presidency of Fort William," and from "which are to take effect" to the end of the section. In section 2, clause *Third*, *omit* "within the territories subject to the Presidency of Fort William". In section 4, *omit* clause *First*. In the same section, clause *Second*, *for* "Zillah or City Magistrate" *read* "Deputy Commissioner," and *for* "Judge of Circuit" *read* "Commissioner of Division". In section 9, *for* "to the Provincial Court of Appeal and Circuit and to the Sudder Dewanny Adawlut and Nizamut Adawlut" *read* "and to the Judicial Commissioner". *Omit* section 10.
[6] * * *	* * *	* * *
XI of 1822	Non-liability of Government for errors of a Court of Justice.	*Omit* the whole except section 38.

[1] Subs. by the A. O. 1937 for "G. G. in C.".

[2] Subs. by the A. O. 1937 for 'Chief Commissioner".

[3] The words "and *for* 'Board of Revenue' *read* 'Chief Commissioner'" were rep. by the United Provinces Act, 1890 (20 of 1890), s. 35.

[4] The words and figures "and *omit* the words and figures '(under the rules prescribed by Regulation 5 of 1804' and "in Regulation 27 of 1803'" were rep. by the Amending Act, 1891 (12 of 1891).

[5] The entry relating to Bengal Regulation 17 of 1806 was rep. by the Transfer of Property Act, 1882 (4 of 1882), the entry relating to Bengal Regulation 20 of 1810 by the Cantonments Act, 1889 (13 of 1889), and the entry relating to Bengal Regulation 5 of 1817 by the Indian Treasure-trove Act, 1878 (6 of 1878).

[6] The entry relating to Bengal Regulation 6 of 1819 was rep. by the Amending Act, 1891 (12 of 1891).

(*The Second Schedule.*)

PART I.—BENGAL REGULATIONS—*concluded.*

Number and year.	Subject.	Modifications.
VI of 1825 .	Supply of troops on the march.	In the preamble, *omit* the last twenty words. In section 2, *omit* "in pursuance of section III, Regulation XI, 1806," and *omit* "sicca". In section 4, *for* "Board of Revenue in whose jurisdiction the district may be situate" and "Board" *read* "Commissioner". In section 5, *omit* "on the stamped paper prescribed for other appeals to the Revenue Boards" and *for* "the proper Board" and "the Board" *read* "the Commissioner".
XI of 1825 .	Alluvion and Diluvion .	*Omit* section 1. In section 3, *omit* "either" and "or the sea". In section 4, clause *First*, *omit* "whether" and "or of the sea," and *for* "the provisions of Regulation II, 1819, or of any other Regulation in force," *read* "any law in force for the time being;" clause *Third*, *omit* "or in the sea" and "or sea;" clause *Fifth*, *omit* "or the sea". In section 5, *for* "Zillah and City Magistrates" *read* "Deputy Commissioners".
[1] * * * .	* * * .	* * *

PART II.—ACTS OF THE GOVERNOR GENERAL IN COUNCIL.

		* * *
[2] * * * .	* * * .	
[3] *XX of 1856* .	*Chaukidars* . . .	In the preamble, *after* "Bengal" *add* "and the territories under the administration of the Chief Commissioner of Oudh". *Omit* the words "of circuit" wherever they occur after "Commissioner". *Omit* section 40.

[1] The entry relating to Bengal Regulation 20 of 1825 was rep. by the Criminal Procedure Code, 1882 (10 of 1882).

[2] The entry relating to Act 19 of 1853 was rep. by the Amending Act, 1903 (1 of 1903).

[3] Act 20 of 1856 has been repealed in the U. P. by the U. P. Town Areas Act, 1914 (U. P. 2 of 1914).

(*The Second Schedule.*)

PART II.—ACTS OF THE GOVERNOR GENERAL IN COUNCIL—*concluded.*

Number and year.	Subject.	Modifications.
XIII of 1857 .	Opium . . .	In the title, *after* "the Presidency of Fort William in Bengal," *read* "and the territories under the administration of the Chief Commissioner of Oudh". [1] * * *
		In section 3, *omit* "being covenanted servants of the Company".
[2] * * * .	* * *	* * *
[3] *XXII of 1871* .	*Chaukidars* . . .	In section 1, *after* "Presidency" *insert* "or territories". In section 3, *omit* the words "of circuit". *Omit* section 6.

THE DRAMATIC PERFORMANCES ACT, 1876.

ACT No. XIX of 1876.[4]

[*16th December 1876.*]

An Act for the better control of public dramatic performances.

Preamble. WHEREAS it is expedient to empower the Government to prohibit public dramatic performances which are scandalous, defamatory, seditious or obscene; It is hereby enacted as follows:—

Short title. **1.** This Act may be called the Dramatic Performances Act, 1876.

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[1] The modification relating to s. 2 was rep. by the Amending Act, 1891 (12 of 1891).

[2] The entry relating to the Minors Act, 1858 (40 of 1858), was rep. by the Guardians and Wards Act, 1890 (8 of 1890).

[3] Act 22 of 1871 was rep. in the U. P. by the Repealing and Amending Act, 1919 (18 of 1919) and generally by the Repealing Act, 1938 (1 of 1938).

[4] For the Statement of Objects and Reasons, *see* Gazette of India, 1876, Pt. V, p. 347; for Proceedings in Council, *see ibid.*, Supplement, pp. 328, 343 and 1341.

This Act has been declared, by notification under s. 3 (*a*) of the Scheduled Districts Act, 1874 (14 of 1874), to be in force in the following Scheduled Districts, namely :—

The Districts of Hazaribagh, Lohardaga and Manbhum, and Pargana Dhalbhum and the Kolhan in the District of Singbhum. *See Gazette* of India, 1886, Pt. I, p. 504. [The District of Lohardaga included at this time the present District of Palamau, which was separated in 1894; Lohardaga is now called the Ranchi District, Calcutta Gazette, 1899, Pt. I, p. 44.]

It extends to the [1][whole of India except Part B States] [2]* * * * * **Local extent.**

2. In this Act "Magistrate" means, in the Presidency-towns, a Magistrate of Police, and elsewhere the Magistrate of the district. **"Magistrate" defined.**

3. Whenever the [3][State Government] is of opinion that any play, pantomime or other drama performed or about to be performed in a public place is— **Power to prohibit certain dramatic performances.**

(*a*) of a scandalous or defamatory nature, or

(*b*) likely to excite feelings of disaffection to the Government established by law in [4][India] or

(*c*) likely to deprave and corrupt persons present at the performance,

the [3][State Government], or outside the Presidency-towns [5]* * * * the [3][State Government] or such Magistrate as it may empower in this behalf, may by order prohibit the performance.

Explanation.—Any building or enclosure to which the public are admitted to witness a performance on payment of money shall be deemed a "public place" within the meaning of this section.

4. A copy of any such order may be served on any person about to take part in the performance so prohibited, or on the owner or occupier of any house, room or place in which such performance is intended to take place ; and any person on whom such copy is served, and who does, or willingly permits, any act in disobedience to such order, shall be punished on conviction before a Magistrate with imprisonment for a term which may extend to three months, or with fine, or with both. **Power to serve order of prohibition.** **Penalty for disobeying order.**

5. Any such order may be notified by proclamation, and a written or printed notice thereof may be stuck up at any place or places adapted for giving information of the order to the persons intending to take part in or to witness the performance so prohibited. **Power to notify order.**

6. Whoever after the notification of any such order— **Penalty for disobeying prohibition.**

(*a*) takes part in the performance prohibited thereby or in any performance substantially the same as the performance so prohibited, or

(*b*) in any manner assists in conducting any such performance, or

(*c*) is, in wilful disobedience to such order, present as a spectator during the whole or any part of any such performance, or

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[1] Subs. by the A. O. 1950 for "all the Provinces of India" which had been subs. by the A. O. 1948 for "the whole of British India."

[2] The words "And it shall come into force at once" rep. by the Repealing and Amending Act, 1914 (10 of 1914).

[3] Subs. by the A. O. 1950 for "Provincial Govt." which had been subs. by the A. O. 1937 for "L. G."

[4] Subs. by the A. O. 1948 for "British India or British Burma". The last three words had been ins. by the A. O. 1937.

[5] The words "and Rangoon" rep. by the A. O. 1937.

(*d*) being the owner or occupier, or having the use of any house, room or place, opens, keeps or uses the same for any such performance, or permits the same to be opened, kept or used for any such performance,

shall be punishable on conviction before a Magistrate with imprisonment for a term which may extend to three months, or with fine, or with both.

Power to call for information.

7. For the purpose of ascertaining the character of any intended public dramatic performance, the [1][State Government], or such officer as it may specially empower in this behalf, may apply to the author, proprietor or printer of the drama about to be performed, or to the owner or occupier of the place in which it is intended to be performed, for such information as the [1][State Government] or such officer thinks necessary.

Every person so applied to shall be bound to furnish the same to the best of his ability, and whoever contravenes this section shall be deemed to have committed an offence under section 176 of the Indian Penal Code.

XLV of 1860.

Power to grant warrant to Police to enter and arrest and seize.

8. If any Magistrate has reason to believe that any house, room or place is used, or is about to be used, for any performance prohibited under this Act, he may, by his warrant, authorize any officer of Police to enter with such assistance as may be requisite, by night or by day, and by force, if necessary, any such house, room or place, and to take into custody all persons whom he finds therein, and to seize all scenery, dresses and other articles found therein and reasonably suspected to have been used, or to be intended to be used, for the purpose of such performance.

Saving of prosecutions under Penal Code, sections 124A and 294.

9. No conviction under this Act shall bar a prosecution under section 124A or section 294 of the Indian Penal Code.

Power to prohibit dramatic performance in any local area, except under license.

10. Whenever it appears to the [1][State Government] that the provisions of this section are required in any local area, it may [2]* * * * declare, by notification in the [3][Official Gazette], that such provisions are applied to such area from a day to be fixed in the notification.

On and after that day, the [1][State Government] may order that no dramatic performance shall take place in any place of public entertainment within such area, except under a license to be granted by such [1][State Government], or such officer as it may specially empower in this behalf.

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[1] Subs. by the A. O. 1950 for "Provincial Govt." which had been subs. by the A. O. 1937 for "L. G.".

[2] The words "with the sanction of the G. G. in C." rep. by the Decentralization Act, 1914 (4 of 1914).

[3] Subs. by the A. O. 1937 for "local official Gazette".

The [1][State Government] may also order that no dramatic performance shall take place in any place of public entertainment within such area, unless a copy of the piece, if and so far as it is written, or some sufficient account of its purport, if and so far as it is in pantomime, has been furnished, not less than three days before the performance, to the [1][State Government] or to such officer as it may appoint in this behalf.

A copy of any order under this section may be served on any keeper of a place of public entertainment; and if thereafter he does, or willingly permits, any act in disobedience to such order, he shall be punishable on conviction before a Magistrate with imprisonment for a term which may extend to three months, or with fine, or with both.

11. [*Powers exercisable by Governor-General.*] *Rep. by the A. O. 1937.*

12. Nothing in this Act applies to any *jatras* or performances of a like kind at religious festivals. **Exclusion of performances at religious festivals.**

THE BHAUNAGAR ACT, 1876

ACT No. XX of 1876.[2]

[*16th December, 1876.*]

An Act to give better effect to certain agreements with the Thakur of Bhaunagar.

WHEREAS the villages mentioned in the Schedule hereto annexed (hereinafter called the scheduled villages) are the property of the Thakur of Bhaunagar, and were by the Treaty of Bassein, dated the thirty-first day of December, 1802, separated from the Native State or States known as the territory of Kathiawad and ceded to the British Government; **Preamble.**

and whereas, by [3]Regulation VI of 1816 of the Governor of Bombay in Council, the Regulations in force throughout the Presidency of Bombay were extended to the said villages, and such villages thereby became subject to the jurisdiction of the Revenue, Civil and Criminal Courts established in that Presidency:

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[1] Subs. by the A. O. 1950 for "Provincial Govt." which had been subs. by the A. O. 1937 for "L. G.".

[2] For Proceedings in Council relating to the Bill which was introduced and passed at the same meeting of the Council, *see* Gazette of India, 1876, Supplement, p. 1351.

[3] Bom. Reg. 6 of 1816 was rep. by Bom. Reg. 1 of 1827.

and whereas the said Thakur of Bhaunagar is also the proprietor of divers villages, forming part of the said territory, and hereinafter called the Kathiawad villages;

and whereas the British Government have exercised certain powers of government over the said territory, but such territory has never been treated as being British territory, nor as having been vested in the East India Company, nor in Her Majesty the Queen of Great Britain and Ireland and Empress of India, and the said Kathiawad villages have consequently never been subject to the laws in force in the Presidency of Bombay;

and whereas in the year 1820 the British Government established a Political Agency for the said territory of Kathiawad;

and whereas in the year 1857 the said Thakur was, by an order of the British Government, invested in respect of the same villages with certain powers of sovereignty limited by and subject to the rules laid down for the government and conduct of the said Kathiawad Political Agency ;

and whereas, for divers reasons of State affecting the welfare of [1][the Provinces], the British Government became desirous of ceding to the Thakur of Bhaunagar the scheduled villages, to be held by him on the same conditions as those on which he holds the Kathiawad villages, and for that purpose certain agreements were made and certain notifications published which were intended to operate as a cession of the scheduled villages;

and whereas on the twenty-ninth day of January, 1866, the Governor of Bombay in Council published a notification declaring that, in accordance with the agreement last hereinbefore recited, the scheduled villages were from and after the first day of February, 1866, removed from the jurisdiction of the Revenue, Civil and Criminal Courts of the Bombay Presidency and transferred to the supervision of the said Political Agency in Kathiawad on the same conditions as to jurisdiction as the said Kathiawad villages;

and whereas the intention of the said agreements and notifications was that the villages comprised therein should be ceded to and vested in the Thakur of Bhaunagar, to be held by him on the terms on which he holds the Kathiawad villages ;

and whereas ever since the first day of February, 1866, the scheduled villages have been governed according to the intentions of the said agreements, and acts of executive authority have been done, proceedings taken and decrees and sentences passed by the Thakur of Bhaunagar and his officers, and by the officers of the said Political Agency, and by the Courts of Justice appointed to exercise jurisdiction within the limits of the said Political Agency;

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[1] **Subs. by the A. O. 1948 for "British India."**

and whereas it now appears that such agreements and notifications were not worded so as to express their true intention, and that the scheduled villages did not thereby cease to be British territory, or to be subject to the laws in force in the Presidency of Bombay;

and whereas by a notification dated the fifth day of December, 1876, after reciting to the effect above recited and reciting that the Secretary of State for India had, on behalf of Her Majesty the Queen of Great Britain and Empress of India, given his sanction to the cession intended to be thereby effected, the Governor-General in Council, with the sanction aforesaid, did thereby cede and grant to the said Thakur of Bhaunagar, his heirs and successors, the said scheduled villages, to hold the same unto the said Thakur, his heirs and successors, on the terms and subject to the rules on and subject to which he holds the said Kathiawad villages; but it was thereby provided that in case the said Thakur, his heirs or successors, should commit any acts of misgovernment which, in the opinion of the Governor-General in Council, rendered it inexpedient that the said Thakur, his heirs and successors, should continue to hold the said scheduled villages, the Governor General in Council might resume the villages thereby ceded and re-annex the same to Her Majesty's dominions;

and whereas it is expedient (so far as relates to any past or future proceedings, in [1][the Provinces] to ratify the aforesaid acts, proceedings and sentences of the Thakur of Bhaunagar and the officers and Courts aforesaid, and to indemnify the said Thakur and officers against any liability in respect thereof, and to provide that no title to property shall be disturbed by any act, proceeding or sentence of any other authority;

It is hereby enacted as follows:—

Short title.

1. This Act may be called the Bhaunagar Act, 1876.

Local extent.

It extends [2][to India];

Commencement.

and it shall come into force at once.

Scheduled villages excluded from jurisdiction of Bombay Courts.

2. The said scheduled villages shall be deemed to have been, on and after the said first day of February, 1866, excluded from the jurisdiction of the Revenue, Civil and Criminal Courts of the [3][State of Bombay].

3. [*Validation of acts done after 1st February 1866.*] *Rep. by the Amending Act, 1895 (XVI of 1895).*

Saving of personal jurisdiction of Courts in India.

4. Nothing in this Act shall affect any jurisdiction which any Court of Justice in [4][India] may for the time being be entitled to exercise over persons resident or being beyond the limits of [4][India.]

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[1] Subs. by the A. O. 1948 for "British India".

[2] Subs. by the A. O. 1950 for "only to the Provinces" which had been subs. by the A. O. 1948 for "only to British India".

[3] Subs. by the A. O. 1950 for "Bombay Presidency".

[4] Subs. by the A. O. 1950 for "the Provinces" which had been subs. by the A. O. 1948 for "British India".

SCHEDULE

Bhaunagar Taluqa

Bhaunagar.	Malanka.	Hathab.
Wadwa.	Bhutesar.	Khadsuliu.
Ruha.	Bhumli.	Bhadbadiu.
Akwara.	Ratanpur Juna.	Alapur.
Adhiwara.	Ratanpur Nuwa.	Thalsar.
Tarsamia.	Koliak.	Lakhanka.
Jaspara.	Kobri.	Sultanpur.
Phulsar.	Bhuri.	Wavri.
Karmadiu.	Bhundariu.	Rampura.
Surka.	Churi.	Bhenswari } (*waste*)
Tarak Palri.	Sankrasar.	Jhanjra. }
Nari.	Bhadole.	
Budhel.	Nagdhaniba.	

Sihor Taluqa.

Sihor.	Ratanpur *near* Tana.	Rajpura.
Usrad.	Wadiu.	Khakhriu.
Agiali.	Walawad.	Kardej.
Tana.	Megwadar.	Surka.
Bordi.	Ghangli.	Jambalu.
Kajawadar.	Nesra.	Kuchotiu (*waste*).
	Chirora (*waste*).	

New Villages.

Gundi.	Trapaj.	Pithalpur.
Mandwa.	Bapara.	Khantari.
Sosia.	Panchpipla.	Deogana.
Paniali.	Rajpura.	Thordi.
	Khadarpur Mitiverdi.	

Inam Villages.

Wartej.	Sampura.	Sodwadra.
Sidhsar.	Phariadku.	Sedhawadar.
	Kalvi (*waste*).	

SCHEDULE—*contd.*

DHANDUKA PARGANA

Patna Taluqa

Patna.	Kanutalao.	Dantretia.
Bharbir.	Ratanwau.	Samandiala.
Chakampur.	Keria.	Kariani.
Sarwui.	Jamrala.	Lathidhar.
Jhinjhawadar.	Ujalwau.	Welawadar.
Pati.	Jotingra.	Virdhi *or* Rajghar.
Keria *near* Pati.	Shirthali.	Sajeli.
Bhambhan.	Dhikwali.	Oteria.
Samandeala, 2.	Wajeli.	Sandhera.
Tajpur.	Lundra.	Nagalpur.
	Malpur.	

RANPUR PARGANA

Botad Taluqa

Botad.	Danknia.	Kaniad.
Hardar.	Khakoi.	Rajpura.
Sirwaniu.	Turkha.	Juria.

THE SPECIFIC RELIEF ACT, 1877.

CONTENTS

PREAMBLE.

PART I.

PRELIMINARY.

SECTIONS.

1. Short title.
   Local Extent.
   Commencement.
2. [*Repealed.*]
3. Interpretation-clause.
   Words defined in Contract Act.
4. Savings.
5. Specific relief how given.
6. Preventive relief.
7. Relief not granted to enforce penal law.

PART II.

OF SPECIFIC RELIEF.

CHAPTER I.

OF RECOVERING POSSESSION OF PROPERTY

(a) Possession of Immovable Property.

SECTIONS.

8. Recovery of specific immoveable property.
9. Suit by person dispossessed of immoveable property.
10. Recovery of specific moveable property.
11. Liability of person in possession, not as owner, to deliver to person entitled to immediate possession.

CHAPTER II.

OF THE SPECIFIC PERFORMANCE OF CONTRACTS.

(a) Contracts which may be specifically enforced.

12. Cases in which specific performance enforceable.
13. Contract of which the subject has partially ceased to exist.
14. Specific performance of part of contract where part unperformed is small.
15. Specific performance of part of contract where part unperformed is large.
16. Specific performance of independent part of contract.
17. Bar in other cases of specific performance of part of contract.
18. Purchaser's rights against vendor with imperfect title.
19. Power to award compensation in certain cases.
20. Liquidation of damages not a bar to specific performance

(b) Contracts which cannot be specifically enforced

21. Contracts not specifically enforceable.

(c) Of the Discretion of the Court.

22. Discretion as to decreeing specific performance.

(d) For whom Contracts may be specifically enforced.

23. Who may obtain specific performance.

(e) For whom Contracts cannot be specifically enforced.

24. Personal bars to the relief.
25. Contracts to sell property by one who has no title, or who is a voluntary settler.

SECTIONS.

(*f*) *For whom Contracts cannot be specifically enforced, except with a Variation.*

26. Non-enforcement except with variation.

(*g*) *Against whom Contracts may be specifically enforced.*

27. Relief against parties and persons claiming under them by subsequent title.

27A. Specific performance in case of part performance of contract to lease.

(*h*) *Against whom Contracts cannot be specifically enforced.*

28. What parties cannot be compelled to perform.

(*i*) *The effect of dismissing a Suit for Specific Performance.*

29. Bar of suit for breach after dismissal.

(*j*) *Awards and Directions to execute Settlements.*

30. Application of preceding sections to awards and testamentary directions to execute settlements.

CHAPTER III.

OF THE RECTIFICATION OF INSTRUMENTS.

31. When instrument may be rectified.
32. Presumption as to intent of parties.
33. Principles of rectification.
34. Specific enforcement of rectified contract.

CHAPTER IV.

OF THE REGISTRATION OF CONTRACTS.

35. When rescission may be adjudged.
36. Rescission for mistake.
37. Alternative prayer for rescission in suit for specific performance.
38. Court may require party rescinding to do equity.

CHAPTER V.

OF THE CANCELLATION OF INSTRUMENTS.

39. When cancellation may be ordered.
40. What instruments may be partially cancelled.
41. Power to require party for whom instrument is cancelled to make compensation.

CHAPTER VI.

OF DECLARATORY DECREES.

42. Discretion of Court as to declaration of status or right. Bar to such declaration.
43. Effect of declaration.

CHAPTER VII.

Of the Appointment of Receivers.

Sections.

44. Appointment of Receivers discretionary.
Reference to Code of Civil Procedure.

CHAPTER VIII.

Of the Enforcement of Public Duties.

45. Power to order public servants and others to do certain specific acts.
Exemptions from such power.
46. Application how made.
Procedure thereon.
Order in alternative.
47. Peremptory order.
48. Execution of, and appeal from, orders.
49. Costs.
50. Saving of power of High Court to issue *mandamus*.
51. Power to frame rules.

PART III.

Of Preventive Relief.

CHAPTER IX.

Of Injunctions Generally.

52. Preventive relief how granted.
53. Temporary injunctions.
Perpetual injunctions.

CHAPTER X.

Of Perpetual Injunctions.

54. Perpetual injunctions when granted.
55. Mandatory injunctions.
56. Injunction when refused.
57. Injunction to perform negative agreement.

SCHEDULE.—[*Repealed.*]

ACT No. I OF 1877.[1]

[*7th February, 1877.*]

An Act to define and amend the law relating to certain kinds of Specific Relief.

WHEREAS it is expedient to define and amend the law relating to certain kinds of specific relief obtainable in civil suits; It is hereby enacted as follows:— Preamble.

PART I.

PRELIMINARY.

1. This Act may be called the Specific Relief Act, 1877. Short title.

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[1] For the Statement of Objects and Reasons, *see* Gazette of India, 1875. Pt. V, p. 258; for the Report of the Select Committee, *see ibid.*, 1876, Pt. V, p. 1445; for discussions in Council, *see ibid.*, 1875, Supplement, pp. 981 and 1025; *ibid.*, 1876, Supplement, p. 1284, and *ibid.*, 1877, Supplement, p. 177.

It has been extended to Berar by the Berar Laws Act, 1941 (4 of 1941) and also, by notification under s. 5 of the Scheduled Districts Act, 1874 (14 of 1874), to the following Scheduled Districts, namely:—

the Scheduled Districts of the Punjab	*See* Gazette of India,	1877, Pt. I, p. 562.
the Districts of Kamrup, Naugong, Darrang, Sibsagar, Lakhimpur, Goalpara (excluding the Eastern Dvars) and Cachar (excluding the North Cachar Hills) . .	Ditto,	1877, Pt. I, p. 662.
the Districts of Hazaribagh, Lohardaga [including the present District of Palamau, separated in 1894] and Manbhum, and Pargana Dhalbhum in the District of Singbhum [Lohardaga is now called the Ranchi District; Calcutta Gazette, 1899, Pt. I, p. 44] . . .	Ditto,	1878, Pt. II, p. 82.
the Scheduled Districts of the Central Provinces . .	Ditto,	1879, Pt. I, p. 772.
Coorg	Ditto,	1882, Pt. I, p. 217.
Western Jalpaiguri . . .	Ditto,	1882, Pt. I, p. 511.
Kumaon and Garhwal and the Tarai Parganas (except s. 9)	Ditto,	1895, Pt. I, p. 573.
That portion of the Jalpaiguri District known as the Western Dvars	Ditto,	1896, Pt. I, p 44.
Ajmer and Merwara . .	Ditto,	1897, Pt. II, p. 1415.
the Darjeeling District . .	Ditto,	1919, Pt. I, p. 152.

S. 9 has been extended, by notification under s. 5 of the Scheduled Districts Act, 1874 (14 of 1874), to the Taluks of Bhadrachalam and Rakapalli and the Rampa

Local extent. It extends to [1][the whole of India, except Part B States and] the Scheduled Districts as defined in Act No. XIV of 1874.[2]

Commencement. And it shall come into force on the first day of May, 1877.

2. [*Repeal of enactments.*] *Rep. by the Amending Act, 1891 (XII of 1891).*

Interpretation-clause. 3. In this Act, unless there be something repugnant in the subject or context,—

"obligation" includes every duty enforceable by law:

"trust" includes every species of express, implied, or constructive fiduciary ownership:

"trustee" includes every person holding, expressly, by implication, or constructively, a fiduciary character:

Illustrations.

(*a*) Z bequeaths land to A, "not doubting that he will pay thereout an annuity of Rs. 1,000 to B for his life". A accepts the bequest. A is a trustee, within the meaning of this Act, for B, to the extent of the annuity.

(*b*) A is the legal, medical, or spiritual adviser of B. By availing himself of his situation as such adviser, A gains some pecuniary advantage which might otherwise have accrued to B. A is a trustee, for B, within the meaning of this Act, of such advantage.

(*c*) A, being B's banker, discloses for his own purpose the state of B's account. A is a trustee, within the meaning of this Act, for B, of the benefit gained by him by means of such disclosure.

(*d*) A, the mortgagee of certain leaseholds, renews the lease in his own name. A is a trustee, within the meaning of this Act, of the renewed lease, for those interested in the original lease.

(*e*) A, one of several partners, is employed to purchase goods for the firm. A, unknown to his co-partners, supplies them, at the market-price, with goods previously bought by himself when the price was lower, and thus makes a considerable profit. A is a trustee for his co-partners, within the meaning of this Act, of the profit so made.

(*f*) A, the manager of B's indigo-factory, becomes agent for C, a vendor of indigo-seed, and receives, without B's assent, commission on the seed purchased from C for the factory. A is a trustee, within the meaning of this Act, for B, of the commission so received.

(*g*) A buys certain land with notice that B has already contracted to buy it. A is a trustee, within the meaning of this Act, for B, of the land so bought.

(*h*) A buys land from B, having notice that C is in occupation of the land. A omits to make any inquiry as to the nature of C's interest therein. A is a trustee, within the meaning of this Act, for C, to the extent of that interest.

Country, *see* Gazette of India, 1879, Pt. I, p. 630; to tracts in the Godavari Agency to which it had not been extended, *see ibid.*, 1900, Pt. I, p. 59, also FortSt. George Gazette, 1900, Pt. I, p. 169; and to Kumaon, Garhwal, the Tarai Parganas, the scheduled portion of the Mirzapur District, and Jaunsar Bawar, *see* Gazette of India, 1886, Pt. I, p. 452.

The Act has been declared to be in force in Panth Piploda, by the Panth Piploda Laws Regulation, 1929 (1 of 1929), s. 2.

[1] Subs. by the A. O. 1950 for "all the Provinces of India except". The words "all the Provinces of India" had been subs. by the A. O. 1948 for "the whole of British India".

[2] The Scheduled Districts Act, 1874 (14 of 1874), rep. by the A. O. 1937.

"settlement" means any instrument (other than a will or codicil as defined by the Indian Succession Act[1]) whereby the destination or devolution of successive interests in movable or immovable property is disposed of or is agreed to be disposed of:

X of 1865.

and all words occurring in this Act, which are defined in the Indian Contract Act, 1872, shall be deemed to have the meanings respectively assigned to them by that Act.

IX of 1872.

Words defined in Contract Act.

4. Except where it is herein otherwise expressly enacted, nothing in this Act shall be deemed—

Savings.

(*a*) to give any right to relief in respect of any agreement which is not a contract:

(*b*) to deprive any person of any right to relief, other than specific performance, which he may have under any contract; or

(*c*) to affect the operation of the Indian Registration Act[2] on documents

5. Specific relief is given—

Specific relief how given.

(*a*) by taking possession of certain property and delivering it to a claimant;

(*b*) by ordering a party to do the very act which he is under an obligation to do;

(*c*) by preventing a party from doing that which he is under an obligation not to do;

(*d*) by determining and declaring the rights of parties otherwise than by an award of compensation; or

(*e*) by appointing a receiver.

6. Specific relief granted under clause (*c*) of section 5 is called preventive relief.

Preventive relief.

7. Specific relief cannot be granted for the mere purpose of enforcing a penal law.

Relief not granted to enforce penal law.

PART II.

Of Specific Relief.

CHAPTER I.

Of Recovering Possession Of Property

(*a*) *Possession of Immovable Property.*

8. A person entitled to the possesion of specific immovable property may recover it in the manner prescribed by the Code of Civil Procedure.[3]

Recovery of specific immovable property.

[1] See now the Indian Succession Act, 1925 (39 of 1925).

[2] See now the Indian Registration Act, 1908 (16 of 1908).

[3] See now the Code of Civil Procedure, 1908 (Act 5 of 1908).

(Part II.—Of Specific Relief. Chapter I.—Of recovering Possession of Property.)

Suit by person dispossessed of immovable property.

[1]**9.** If any person is dispossessed without his consent of immovable property otherwise than in due course of law, he or any person claiming through him may, by suit [2]* * * * recover possession thereof, notwithstanding any other title that may be set up in such suit.

Nothing in this section shall bar any person from suing to establish his title to such property and to recover possession thereof.

No suit under this section shall be brought against [3][[4]* * * the Central Government [5]* * * or any [6][State] Government].

No appeal shall lie from any order or decree passed in any suit instituted under this section, nor shall any review of any such order or decree be allowed.

(b) Possession of Movable Property.

Recovery of specific movable property.

10. A person entitled to the possession of specific movable property may recover the same in the manner prescribed by the Code of Civil Procedure.[7]

Explanation 1.—A trustee may sue under this section for the possession of property to the beneficial interest in which the person for whom he is trustee is entitled.

Explanation 2.—A special or temporary right to the present possession of property is sufficient to support a suit under this section.

Illustrations.

(*a*) A bequeaths land to B for his life, with remainder to C. A dies. B enters on the land, but C, without B's consent, obtains possession of the title-deeds. B may recover them from C.

(*b*) A pledges certain jewels to B to secure a loan. B disposes of them before he is entitled to do so. A, without having paid or tendered the amount of the loan, sues B for possession of the jewels. The suit should be dismissed, as A is not entitled to their possession, whatever right he may have to secure their safe custody.

(*c*) A receives a letter addressed to him by B. B gets back the letter without A's consent. A has such a property therein as entitles him to recover it from B.

(*d*) A deposits books and papers for safe custody with B. B loses them and C finds them, but refuses to deliver them to B when demanded. B may recover them from C, subject to C's right, if any, under section 168 of the Indian Contract Act, 1872. IX of 1872.

(*e*) A, a warehouse-keeper, is charged with the delivery of certain goods to Z, which B takes out of A's possession. A may sue B for the goods.

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[1] But *see* as to tenancies in the Punjab, the Punjab Tenancy Act, 1887 (16 of 1887), s. 51

[2] The words "instituted within six months from the date of the dispossession" rep. by the Amending Act, 1891 (12 of 1891).

[3] Subs. by the A. O. 1937 for "the Govt.".

[4] The words "the Secretary of State" rep. by the A. O. 1948.

[5] The words "the Crown Representative" rep. by the A. O. 1948.

[6] Subs. by the A. O. 1950 for "Provincial".

[7] *See* now the Code of Civil Procedure, 1908 (Act 5 of 1908).

(Part II.—Of Specific Relief. .Chapter I.—Of recovering Possession of Property. Chapter II.—Of the Specific Performance of Contracts.)

11. Any person having the possession or control of a particular article of movable property, of which he is not the owner, may be compelled specifically to deliver it to the person entitled to its immediate possession, in any of the following cases:—

Liability of person in possession, not as owner, to deliver to person entitled to immediate possession.

(*a*) when the thing claimed is held by the defendant as the agent or trustee of the claimant;

(*b*) when compensation in money would not afford the claimant adequate relief for the loss of the thing claimed;

(*c*) when it would be extremely difficult to ascertain the actual damage caused by its loss;

(*d*) when the possession of the thing claimed has been wrongfully transferred from the claimant.

Illustrations—

of clause (*a*)—

A, proceeding to Europe, leaves his furniture in charge of B as his agent during his absence. B, without A's authority, pledges the furniture to C, and C, knowing that B had no right to pledge the furniture, advertises it for sale. C may be compelled to deliver the furniture to A, for he holds it as as A's trustee.

of clause (*b*)—

Z has got possession of an idol belonging to A's family, and of which A is the proper custodian Z may be compelled to deliver the idol to A.

of clause (*c*)—

A is entitled to a picture by a dead painter and a pair of rare China vases. B has possession of them. The articles are of too special a character to bear an ascertainable market-value B may be compelled to deliver them to A.

CHAPTER II.

Of the Specific Performance of Contracts.

(*a*) *Contracts which may be specifically enforced.*

12. Except as otherwise provided in this Chapter, the specific performance of any contract may in the discretion of the Court be enforced—

Cases in which specific performance enforceable.

(*a*) when the act agreed to be done is in the performance, wholly or partly, of a trust;

(*b*) when there exists no standard for ascertaining the actual damage caused by non-performance of the act agreed to be done;

(*c*) when the act agreed to be done is such that pecuniary compensation for its non-performance would not afford adequate relief; or

(*d*) when it is probable that pecuniary compensation cannot be got for the non-performance of the act agreed to be done.

(*Part II.—Of Specific Relief. Chapter II.—Of the Specific Performance of Contracts.*)

Explanation.—Unless and until the contrary is proved, the Court shall presume that the breach of a contract to transfer immovable property cannot be adequately relieved by compensation in money, and that the breach of a contract to transfer movable property can be thus relieved.

Illustrations—

of clause (*a*)—

[1] A holds certain stock in trust for B. A wrongfully disposes of the stock. The law creates an obligation on A to restore the same quantity of stock to B, and B may enforce specific performance of this obligation.

of clause (*b*)—

A agrees to buy, and B agrees to sell, a picture by a dead painter and two rare China vases. A may compel B specifically to perform this contract, for there is no standard for ascertaining the actual damage which would be caused by its non-performance.

of clause (*c*)—

A contracts with B to sell him a house for Rs. 1,000. B is entitled to a decree directing A to convey the house to him, he paying the purchase-money.

In consideration of being released from certain obligations imposed on it by its Act of Incorporation, a railway-company contract with Z to make an archway through their railway to connect lands of Z severed by the railway, to construct a road between certain specified points, to pay a certain annual sum towards the maintenance of this road, and also to construct a siding and a wharf as specified in the contract. Z is entitled to have this contract specifically enforced, for his interest in its performance cannot be adequately compensated for by money; and the Court may appoint a proper person to superintend the construction of the archway, road, siding and wharf.

A contracts to sell, and B contracts to buy, a certain number of railway-shares of a particular description. A refuses to complete the sale. B may compel A specifically to perform this agreement, for the shares are limited in number and not always to be had in the market, and their possession carries with it the status of a shareholder, which cannot otherwise be procured.

A contracts with B to paint a picture for B, who agrees to pay therefor Rs. 1,000 The picture is painted. B is entitled to have it delivered to him on payment or tender of the Rs. 1,000.

of clause (*d*)—

A transfers without endorcement, but for valuable consideration, a promissory note to B. A becomes insolvent, and C is appointed his assignee. B may compel C to endorse the note, for C has succeeded to A's liabilities, and a decree for pecuniary compensation for not endorsing the note would be fruitless.

Contract of which the subject has partially ceased to exist.

13. Notwithstanding anything contained in section 56 of the Indian Contract Act, a contract is not wholly impossible of performance because a portion of its subject-matter, existing at its date, has ceased to exist at the time of the performance. IX of 1872.

Illustrations.

(*a*) A contracts to sell a house to B for a lakh of rupees. The day after the contract is made the house is destroyed by a cyclone. B may be compelled to perform his part of the contract by paying the purchase-money.

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[1] This Illustration is rep. wherever the Indian Trusts Act, 1882 (2 of 1882), is in force—*see* ss. 1 and 2 of that Act.

(*b*) In consideration of a sum of money payable by B, A contracts to grant an annuity to B for B's life. The day after the contract has been made, B is thrown from his horse and killed. B's representative may be compelled to pay the purchase-money.

Specific performance of part of contract where part unperformed is small.

14. Where a party to a contract is unable to perform the whole of his part of it, but the part which must be left unperformed bears only a small proportion to the whole in value, and admits of compensation in money, the Court may, at the suit of either party, direct the specific performance of so much of the contract as can be performed, and award compensation in money for the deficiency.

Illustrations.

(*a*) A contracts to sell B a piece of land consisting of 100 bighas. It turns out that 98 bighas of the land belong to A, and the two remaining bighas to a stranger, who refuses to part with them. The two bighas are not necessary for the use or enjoyment of the 98 bighas, nor so important for such use or enjoyment that the loss of them may not be made good in money. A may be directed at the suit of B to convey to B the 98 bighas and to make compensation to him for not conveying the two remaining bighas; or B may be directed, at the suit of A, to pay to A, on receiving the conveyance and possession of the land, the stipulated purchase-money less a sum awarded as compensation for the deficiency.

(*b*) In a contract for the sale and purchase of a house and lands for two lakhs of rupees, it is agreed that part of the furniture should be taken at a valuation. The Court may direct specific performance of the contract notwithstanding the parties are unable to agree as to the valuation of the furniture, and may either have the furniture valued in the suit and include it in the decree for specific performance, or may confine its decree to the house.

Specific performance of part of contract where part unperformed is large.

15. Where a party to a contract is unable to perform the whole of his part of it, and the part which must be left unperformed forms a considerable portion of the whole, or does not admit of compensation in money, he is not entitled to obtain a decree for specific performance. But the Court may, at the suit of the other party, direct the party in default to perform specifically so much of his part of the contract as he can perform, provided that the plaintiff relinquishes all claim to further performance, and all right to compensation either for the deficiency, or for the loss or damage sustained by him through the default of the defendant.

Illustrations.

(*a*) A contracts to sell to B a piece of land consisting of 100 bighas. It turns out that 50 bighas of the land belong to A, and the other 50 bighas to a stranger, who refuses to part with them. A cannot obtain a decree against B for the specific performance of the contract: but if B is willing to pay the price agreed upon, and to take the 50 bighas which belong to A, waiving all right to compensation either for the deficiency or for loss sustained by him through A's neglect or default, B is entitled to a decree directing A to convey those 50 bighas to him on payment of the purchase-money.

(*b*) A contracts to sell to B an estate with a house and garden for a lakh of rupees. The garden is important for the enjoyment of the house. It turns out that A is unable to convey the garden. A cannot obtain a decree against B for the specific performance of the contract, but if B is willing to pay the price agreed upon, and to take the estate and house without the garden, waiving all right to compensation either

for the deficiency or for loss sustained by him through A's neglect or default, B is entitled to a decree directing A to convey the house to him on payment of the purchase-money.

Specific performance of independent part of contract.

16. When a part of a contract which, taken by itself, can and ought to be specifically performed, stands on a separate and independent footing from another part of the same contract which cannot or ought not to be specifically performed, the Court may direct specific performance of the former part.

Bar in other cases of specific performance of part of contract.

17. The Court shall not direct the specific performance of a part of a contract except in cases coming under one or other of the three last preceding sections.

Purchaser's rights against vendor with imperfect title.

18. Where a person contracts to sell or let certain property, having only an imperfect title thereto, the purchaser or lessee (except as otherwise provided by this Chapter) has the following rights:—

(*a*) if the vendor or lessor has subsequently to the sale or lease acquired any interest in the property, the purchaser or lessee may compel him to make good the contract out of such interest;

(*b*) where the concurrence of other persons is necessary to validate the title, and they are bound to convey at the vendor's or lessor's request, the purchaser or lessee may compel him to procure such concurrence;

(*c*) where the vendor professes to sell unincumbered property, but the property is mortgaged for an amount not exceeding the purchase-money, and the vendor has in fact only a right to redeem it, the purchaser may compel him to redeem the mortgage and to obtain a conveyance from the mortgagee;

(*d*) where the vendor or lessor sues for specific performance of the contract, and the suit is dismissed on the ground of his imperfect title, the defendant has a right to a return of his deposit (if any) with interest thereon, to his costs of the suit, and to a lien for such deposit, interest and costs on the interest of the vendor or lessor in the property agreed to be sold or let.

Power to award compensation in certain cases.

19. Any person suing for the specific performance of a contract may also ask for compensation for its breach, either in addition to, or in substitution for, such performance.

(Part II.—Of Specific Relief. Chapter II.—Of the Specific Performance of Contracts.)

If in any such suit the Court decides that specific performance ought not to be granted, but that there is a contract between the parties which has been broken by the defendant and that the plaintiff is entitled to compensation for that breach, it shall award him compensation accordingly.

If in any such suit the Court decides that specific performance ought to be granted, but that it is not sufficient to satisfy the justice of the case, and that some compensation for breach of the contract should also be made to the plaintiff, it shall award him such compensation accordingly.

Compensation awarded under this section may be assessed in such manner as the Court may direct.

Explanation.—The circumstance that the contract has become incapable of specific performance does not preclude the Court from exercising the jurisdiction conferred by this section.

Illustrations.

of the second paragraph—

A contracts to sell a hundred maunds of rice to B. B brings a suit to compel A to perform the contract or to pay compensation. The Court is of opinion that A has made a valid contract and has broken it without excuse, to the injury of B, but that specific performance is not the proper remedy. It shall award to B such compensation as it deems just.

of the third paragraph—

A contracts with B to sell him a house for Rs. 1,000, the price to be paid and the possession given on the 1st January, 1877. A fails to perform his part of the contract and B brings his suit for specific performance and compensation, which is decided in his favour on the 1st January 1878. The decree may, besides ordering specific performance, award to B compensation for any loss which he has sustained by A's refusal.

of the *Explanation*—

A, a purchaser, sues B, his vendor, for specific performance of a contract for the sale of a patent. Before the hearing of the suit the patent expires The Court may award A compensation for the non-performance of the contract, and may, if necessary, amend the plaint for that purpose.

A sues for the specific performance of a resolution passed by the Directors of a public company, under which he was entitled to have a certain number of shares allotted to him, and for compensation for the non-performance of the resolution. All the shares had been allotted before the institution of the suit. The Court may, under this section, award A compensation for the non-performance.

Liquidation of damages not a bar to specific performance.

20. A contract, otherwise proper to be specifically enforced, may be thus enforced, though a sum be named in it as the amount to be paid in case of its breach, and the party in default is willing to pay the same.

Illustration—

A contracts to grant B an under-lease of property held by A under C, and that he will apply to C for a license necessary to the validity of the under-lease, and that, if the license is not procured, A will pay B Rs. 10,000 A refuses to apply for the license and offers to pay B the Rs. 10,000 B is nevertheless entitled to have the contract specifically enforced if C consents to give the license.

(Part II.—Of Specific Relief. Chapter II.—Of the Specific Performance of Contracts.)

(b) Contracts which cannot be specifically enforced.

Contracts not specifically enforceable.

21. The following contracts cannot be specifically enforced:—

(*a*) a contract for the non-performance of which compensation in money is an adequate relief;

(*b*) a contract which runs into such minute or numerous details, or which is so dependent on the personal qualifications or volition of the parties, or otherwise from its nature is such, that the Court cannot enforce specific performance of its material terms;

(*c*) a contract the terms of which the Court cannot find with reasonable certainty;

(*d*) a contract which is in its nature revocable;

(*e*) a contract made by trustees either in excess of their powers or in breach of their trust;

(*f*) a contract made by or on behalf of a corporation or public company created for special purposes, or by the promoters of such company, which is in excess of its powers;

(*g*) a contract the performance of which involves the performance of a continuous duty extending over a longer period than three years from its date;

(*h*) a contract of which a material part of the subject-matter, supposed by both parties to exist, has, before it has been made, ceased to exist.

And, save as provided by the [1][Arbitration Act, 1940], no contract to refer [2][present or future differences] to arbitration shall be specifically enforced; but if any person who has made such a contract [3][other than an arbitration agreement to which the provisions of the said Act apply] and has refused to perform it sues in respect of any subject which he has contracted to refer, the existence of such contract shall bar the suit. X of 1940.

Illustrations—

to (*a*)—

A contracts to sell, and B contracts to buy, a lakh of rupees in the four per cent. loan of the [4][Central Government].

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[1] Subs. by the Arbitration Act, 1940 (10 of 1940), s. 49(2) and Sch. IV, for "Code of Civil Procedure and the Indian Arbitration Act, 1899".

[2] Subs. by the Indian Arbitration Act, 1899 (9 of 1899), s. 21, for "a controvery".

[3] Ins. by Act 10 of 1940, s. 49 (2) and Sch. IV.

[4] Subs. by the A. O. 1937 for "G. of I.".

(Part II.—Of Specific Relief. Chapter II.—Of the Specific Performance of Contracts.)

A contracts to sell, and B contracts to buy, 40 chests of indigo at Rs. 1,000 per chest.

In consideration of certain property having been transferred by A to B, B contracts to open a credit in A's favour to the extent of Rs. 10,000, and to honour A's drafts to that amount :

The above contracts cannot be specifically enforced, for in the first and second both A and B, and in the third A, would be reimbursed by compensation in money.

to (*b*)—

A contracts to render personal service to B :

A contracts to employ B on personal service :

A, an author, contracts with B, a publisher, to complete a literary work :

B cannot enforce specific performance of these contracts.

A contracts to buy B's business at the amount of a valuation to be made by two valuers, one to be named by A and the other by B. A and B each name a valuer, but before the valuation is made, A instructs his valuer not to proceed :

By a charter-party entered into in Calcutta between A, the owner of a ship, and B, the charterer, it is agreed that the ship shall proceed to Rangoon and there load a cargo of rice, and thence proceed to London, freight to be paid, one-third on arrival at Rangoon, and two-thirds on delivery of the cargo in London :

A lets land to B and B contracts to cultivate it in a particular manner for three years next after the date of the lease :

A and B contract that, in consideration of annual advances to be made by A, B will for three years next after the date of the contract grow particular crops on the land in his possession and deliver them to A when cut and ready for delivery :

A contracts with B that, in consideration of Rs. 1,000 to be paid to him by B, he will paint a picture for B :

A contracts with B to execute certain works which the Court cannot superintend :

A contracts to supply B with all the goods of a certain class which B may require :

A contracts with B to take from B a lease of a certain house for a specified term, at a specified rent, "if the drawing-room is handsomely decorated," even if it is held to have so much certainty that compensation can be recovered for its breach :

A contracts to marry B :

The above contracts cannot be specifically enforced.

to (*c*)—

A, the owner of a refreshment-room, contracts, with B to give him accommodation there for the sale of his goods and to furnish him with the necessary appliances. A refuses to perform his contract. The case is one for compensation and not for specific performance, the amount and nature of the accommodation and appliances being undefined.

to (*d*)—

A and B contract to become partners in a certain business, the contract not specifying the duration of the proposed partnership. This contract cannot be specifically performed, for, if it were so performed, either A or B might at once dissolve the partnership.

to (*e*)—

A is a trustee of land with power to lease it for seven years. He enters into a contract with B to grant a lease of the land for seven years, with a covenant to renew the lease at the expiry of the term. This contract cannot be specifically enforced.

The Directors of a company have power to sell the concern with the sanction of a general meeting of the shareholders. They contract to sell it without any such sanction. This contract cannot be specifically enforced.

(Part II.—Of Specific Relief. Chapter II.—Of the Specific Performance of Contracts.)

Two trustees, A and B, empowered to sell trust property worth a lakh of rupees, contract to sell it to C for Rs. 30,000. The contract is so disadvantageous as to be a breach of trust. C cannot enforce its specific performance.

The promoters of a company for working mines contract that the company, when formed, shall purchase certain mineral property. They take no proper precautions to ascertain the value of such property—and in fact agree to pay an extravagant price therefor. They also stipulate that the vendors shall give them a bonus out of the purchase-money. This contract cannot be specifically enforced.

to (*f*)—

A company existing for the sole purpose of making and working a railway contract for the purchase of a piece of land for the purpose of erecting a cotton-mill thereon. This contract cannot be specifically enforced.

to (*g*)—

A contracts to let for twenty-one years to B the right to use such part of a certain railway made by A as was upon B's land, and that B should have a right of running carriages over the whole line on certain terms, and might require A to supply the necessary engine-power, and that A should during the term keep the whole railway in good repair. Specific performance of this contract must be refused to B.

to (*h*)—

A contracts to pay an annuity to B for the lives of C and D. It turns out that, at the date of the contract, C, though supposed by A and B to be alive, was dead. The contract cannot be specifically performed.

(*c*) *Of the Discretion of the Court.*

Descretion as to decreeing specific performance.

22. The jurisdiction to decree specific performance is discretionary, and the Court is not bound to grant such relief merely because it is lawful to do so; but the discretion of the Court is not arbitrary but sound and reasonable, guided by judicial principles and capable of correction by a Court of appeal.

The following are cases in which the Court may properly exercise a discretion not to decree specific performance:—

I. Where the circumstances under which the contract is made are such as to give the plaintiff an unfair advantage over the defendant, though there may be no fraud or misrepresentation on the plaintiff's part.

Illustrations.

(*a*) A, a tenant for life of certain property, assigns his interest therein to B. C contracts to buy, and B contracts to sell, that interest. Before the contract is completed, A receives a mortal injury from the effects of which he dies the day after the contract is executed. If B and C were equally ignorant or equally aware of the fact, B is entitled to specific performance of the contract. If B knew the fact, and C did not, specific performance of the contract should be refused to B.

(*b*) A contracts to sell to B the interest of C in certain stock-in-trade. It is stipulated that the sale shall stand good, even though it should turn out that C's interest is worth nothing. In fact, the value of C's interest depends on the result of certain partnership-accounts, on which he is heavily in debt to his partners. This indebtedness is known to A, but not to B. Specific performance of the contract should be refused to A.

(Part II.—Of Specific Relief. Chapter II.—Of the Specific Performance of Contracts.)

(*c*) A contracts to sell, and B contracts to buy, certain land. To protect the land from floods, it is necessary for its owner to maintain an expensive embankment. B does not know of this circumstance, and A conceals it from him. Specific performance of the contract should be refused to A.

(*d*) A's property is put up to auction. B requests C, A's attorney, to bid for him. C does this inadvertently and in good faith. The persons present, seeing the vendor's attorney bidding, think that he is a mere puffer and cease to compete. The lot is knocked down to B at a low price. Specific performance of the contract should be refused to B.

II. Where the performance of the contract would involve some hardship on the defendant which he did not foresee, whereas its non-performance would involve no such hardship on the plaintiff.

Illustrations.

(*e*) A is entitled to some land under his father's will on condition that if he sells it within twenty-five years, half the purchase-money shall go to B. A, forgetting the condition, contracts, before the expiration of the twenty five years, to sell the land to C. Here the enforcement of the contract would operate so harshly on A, that the Court will not compel its specific performance in favour of C.

(*f*) A and B, trustees, join their beneficiary, C, in a contract to sell the trust-estate to D, and personally agree to exonerate the estate from heavy incumbrances to which it is subject. The purchase-money is not nearly enough to discharge those incumbrances, though, at the date of the contract, the vendors believed it to be sufficient. Specific performance of the contract should be refused to D.

(*g*) A, the owner of an estate, contracts to sell it to B, and stipulates that he, A, shall not be obliged to define its boundary. The estate really comprises a valuable property, not known to either to be part of it. Specific performance of the contract should be refused to B unless he waives his claim to the unknown property.

(*h*) A contracts with B to sell him certain land, and to make a road to it from a certain railway-station. It is found afterwards that A cannot make the road without exposing himself to litigation. Specific performance of the part of the contract relating to the road should be refused to B, even though it may be held that he is entitled to specific performance of the rest with compensation for loss of the road.

(*i*) A, a lessee of mines, contracts with B, his lessor, that at any time during the continuance of the lease B may give notice of his desire to take the machinery and plant used in and about the mines, and that he shall have the articles specified in his notice delivered to him at a valuation on the expiry of the lease. Such a contract might be most injurious to the lessee's business, and specific performance of it should be refused to B.

(*j*) A contracts to buy certain land from B. The contract is silent as to access to the land. No right of way to it can be shown to exist. Specific performance of the contract should be refused to B.

(*k*) A contracts with B to buy from B's manufactory and not elsewhere all the goods of a certain class used by A in his trade. The Court cannot compel B to supply the goods, but if he does not supply them, A may be ruined unless he is allowed to buy them elsewhere. Specific performance of the contract should be refused to B.

The following is a case in which the Court may properly exercise a discretion to decree specific performance:—

III. Where the plaintiff has done substantial acts or suffered losses in consequence of a contract capable of specific performance.

(Part II.—Of Specific Relief. Chapter II.—Of the Specific Performance of Contracts.)

Illustration.

A sells land to a railway-company, who contract to execute certain works for his convenience. The company take the land and use it for their railway. Specific performance of the contract to execute the works should be decreed in favour of A.

(d) For whom Contracts may be specifically enforced.

Who may obtain specific performance.

23. Except as otherwise provided by this Chapter, the specific performance of a contract may be obtained by—

(*a*) any party thereto;

(*b*) the representative in interest, or the principal, of any party thereto: provided that, where the learning, skill, solvency or any personal quality of such party is a material ingredient in the contract, or where the contract provides that his interest shall not be assigned, his representative in interest or his principal shall not be entitled to specific performance of the contract, unless where his part thereof has already been performed;

(*c*) where the contract is a settlement on marriage, or a compromise of doubtful rights between members of the same family, any person beneficially entitled thereunder;

(*d*) where the contract has been entered into by a tenant for life in due exercise of a power, the remainderman;

(*e*) a reversioner in possession, where the agreement is a covenant entered into with his predecessor in title and the reversioner is entitled to the benefit of such covenant;

(*f*) a reversioner in remainder, where the agreement is such a covenant, and the reversioner is entitled to the benefit thereof and will sustain material injury by reason of its breach;

(*g*) when a public company has entered into a contract and subsequently becomes amalgamated with another public company, the new company which arises out of the amalgamation;

(*h*) when the promoters of a public company have, before its incorporation, entered into a contract for the purposes of the company, and such contract is warranted by the terms of the incorporation, the company.

(Part II.—Of Specific Relief. Chapter II.—Of the Specific Performance of Contracts.)

(e) For whom Contracts cannot be specifically enforced.

Personal bars to the relief.

24. Specific performance of a contract cannot be enforced in favour of a person—

(*a*) who could not recover compensation for its breach;

(*b*) who has become incapable of performing, or violates, any essential term of the contract that on his part remains to be performed;

(*c*) who has already chosen his remedy and obtained satisfaction for the alleged breach of contract; or

(*d*) who, previously to the contract, had notice that a settlement of the subject-matter thereof (though not founded on any valuable consideration) had been made and was then in force.

Illustrations—

to clause (*a*)—

A, in the character of agent for B, enters into an agreement with C to buy C's house. A is in reality acting, not as agent for B, but on his own account. A cannot enforce specific performance of this contract.

to clause (*b*)—

A contracts to sell B a house and to become tenant thereof for a term of fourteen years from the date of the sale at a specified yearly rent. A becomes insolvent. Neither he nor his assignee can enforce specific performance of the contract.

A contracts to sell B a house and garden in which there are ornamental trees, a material element in the value of the property as a residence. A, without B's consent, fells the trees. A cannot enforce specific performance of the contract.

A, holding land under a contract with B for a lease, commits waste, or treats the land in an unhusbandlike manner. A cannot enforce specific performance of the contract.

A contracts to let, and B contracts to take, an unfinished house, B contracting to finish the house and the lease to contain covenants on the part of A to keep the house in repair. B finishes the house in a very defective manner: he cannot enforce the contract specifically, though A and B may sue each other for compensation for breach of it.

to clause (*c*)—

A contracts to let, and B contracts to take, a house for a specified term at a specified rent. B refuses to perform the contract. A thereupon sues for, and obtains compensation for the breach. A cannot obtain specific performance of the contract.

Contracts to sell property by one who has no title or who is a voluntary settler.

25. A contract for the sale or letting of property, whether movable or immovable, cannot be specifically enforced in favour of a vendor or lessor—

(*a*) who, knowing himself not to have any title to the property, has contracted to sell or let the same;

(*b*) who, though he entered into the contract believing that he had a good title to the property, cannot, at the time fixed by the parties or by the Court for the completion of the sale or letting, give the purchaser or lessee a title free from reasonable doubt;

(*c*) who, previous to entering into the contract, has made a settlement (though not founded on any valuable consideration) of the subject-matter of the contract.

Illustrations.

(*a*) A, without C's authority, contracts to sell to B an estate which A knows to belong to C. A cannot enforce specific performance of this contract, even though C is willing to confirm it.

(*b*) A bequeaths his land to trustees, declaring that they may sell it with the consent in writing of B. B gives a general prospective assent in writing to any sale which the trustees may make. The trustees then enter into a contract with C to sell him the land. C refuses to carry out the contract. The trustees cannot specifically enforce this contract, as in the absence of B's consent to the particular sale to C, the title which they can give C is, as the law stands, not free from reasonable doubt.

(*c*) A, being in possession of certain land, contracts to sell it to Z. On inquiry it turns out that A claims the land as heir of B, who left the country several years before, and is generally believed to be dead, but of whose death there is no sufficient proof. A cannot compel Z specifically to perform the contract.

(*d*) A, out of natural love and affection, makes a settlement of certain property on his brothers and their issue, and afterwards enters into a contract to sell the property to a stranger. A cannot enforce specific performance of this contract so as to override the settlement, and thus prejudice the interests of the persons claiming under it.

(*f*) *For whom Contracts cannot be specifically enforced, except with a Variation.*

Non-enforcement except with variation.

26. Where a plaintiff seeks specific performance of a contract in writing, to which the defendant sets up a variation, the plaintiff cannot obtain the performance sought, except with the variation so set up, in the following cases (namely):—

(*a*) where by fraud or mistake of fact the contract of which performance is sought is in terms different from that which the defendant supposed it to be when he entered into it;

(*b*) where by fraud, mistake of fact, or surprise the defendant entered into the contract under a reasonable misapprehension as to its effect as between himself and the plaintiff;

(*c*) where the defendant, knowing the terms of the contract and understanding its effect, has entered into it relying upon some misrepresentation by the plaintiff, or upon some stipulation on the plaintiff's part, which adds to the contract, but which he refuses to fulfil;

(*d*) where the object of the parties was to produce a certain legal result, which the contract as framed is not calculated to produce;

(*e*) where the parties have, subsequently to the execution of the contract, contracted to vary it.

Illustrations.

(*a*) A, B and C sign a writing by which they purport to contract each to enter into a bond to D for Rs. 1,000. In a suit by D, to make A, B and C separately liable each to the extent of Rs. 1,000, they prove that the word "each" was inserted by mistake; that the intention was that they should give a joint bond for Rs. 1,000. D can obtain the performance sought only with the variation thus set up.

(*b*) A sues B to compel specific performance of a contract in writing to buy a dwelling-house. B proves that he assumed that the contract included an adjoining yard, and the contract was so framed as to leave it doubtful whether the yard was so included or not. The Court will refuse to enforce the contract, except with the variation set up by B.

(*c*) A contracts in writing to let to B a wharf, together with a strip of A's land delineated in a map. Before signing the contract, B proposed oraly that he should be at liberty to substitute for the strip mentioned in the contract another strip of A's land of the same dimensions, and to this A expressly assented. B then signed the written contract. A cannot obtain specific performance of the written contract, except with the variation set up by B.

(*d*) A and B enter into negotiations for the purpose of securing land for B for his life, with remainder to his issue. They execute a contract, the terms of which are found to confer an absolute ownership on B. The contract so framed cannot be specifically enforced.

(*e*) A contracts in writing to let a house to B, for a certain term, at the rent of Rs. 100 per month, putting it first into tenantable repair. The house turns out to be not worth repairing, so, with B's consent, A pulls it down and erects a new house in its place: B contracting orally to pay rent at Rs. 120 per mensem. B then sues to enforce specific performance of the contract in writing. He cannot enforce it except with the variations made by the subsequent oral contract.

(*g*) *Against whom Contracts may be specifically enforced.*

Relief against parties and persons claiming under them by subsequent title.

27. Except as otherwise provided by this Chapter, specific performance of a contract may be enforced against—

(*a*) either party thereto;

(*b*) any other person claiming under him by a title arising subsequently to the contract, except a transferee for value who has paid his money in good faith and without notice of the original contract;

(c) any person claiming under a title which, though prior to the contract and known to the plaintiff, might have been displaced by the defendant;

(*d*) when a public company has entered into a contract and subsequently becomes amalgamated with another public company, the new company which arises out of the amalgamation;

(*e*) when the promoters of a public company have, before its incorporation, entered into a contract, the company: provided that the company has ratified and adopted the contract and the contract is warranted by the terms of the incorporation.

Illustrations—

to clause (*b*)—

A contracts to convey certain land to B by a particular day. A dies intestate before that day without having conveyed the land. B may compel A's heir or other representative in interest to perform the contract specifically.

A contracts to sell certain land to B for Rs. 5,000. A afterwards conveys the land for Rs. 6,000 to C, who has notice of the original contract. B may enforce specific performance of the contract as against C.

A contracts to sell land to B for Rs. 5,000. B takes possession of the land. Afterwards A sells it to C for Rs. 6,000. C makes no inquiry of B relating to his interest in the land. B's possession is sufficient to affect C with notice of his interest, and he may enforce specific performance of the contract against C.

A contracts, in consideration of Rs. 1,000, to bequeath certain of his lands to B. Immediately after the contract A dies intestate, and C takes out administration to his estate. B may enforce specific performance of the contract against C.

A contracts to sell certain land to B. Before the completion of the contract, A becomes a lunatic and C is appointed his committee. B may specifically enforce the contract against C.

to clause (*c*)—

A, the tenant for life of an estate, with remainder to B, in due exercise of a power conferred by the settlement under which he is tenant for life, contracts to sell the estate to C, who has notice of the settlement. Before the sale is completed, A dies. C may enforce specific performance of the contract against B.

A and B are joint tenants of land, his undivided moiety of which either may alien in his lifetime, but which, subject to that right, devolves on the survivor. A contracts to sell his moiety to C and dies. C may enforce specific performance of the contract against B.

Specific performance in case of part performance of contract to lease.

[1][**27A.** Subject to the provisions of this Chapter, where a contract to lease immovable property is made in writing signed by the parties thereto or on their behalf, either party may, notwithstanding that the contract, though required to be registered, has not been registered, sue the other for specific performance of the contract if,—

(*a*) where specific performance is claimed by the lessor, he has delivered possession of the property to the lessee in part performance of the contract; and

(*b*) where specific performance is claimed by the lessee, he has, in part performance of the contract, taken possession of the property, or, being already in possession, continues in possession in part performance of the contract, and has done some act in furtherance of the contract:

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[1] Ins. by the Transfer of Property (Amendment) Supplementary Act, 1929 (21 of 1929), s. 3.

(Part II.—Of Specific Relief. Chapter II.—Of the Specific Performance of Contracts.)

Provided that nothing in this section shall affect the rights of a transferee for consideration who has no notice of the contract or of the part performance thereof.

This section applies to contracts to lease executed after the first day of April, 1930.]

(h) Against whom Contracts cannot be specifically enforced.

28. Specific performance of a contract cannot be enforced against a party thereto in any of the following cases:— **What parties cannot be compelled to perform.**

(*a*) if the consideration to be received by him is so grossly inadequate, with reference to the state of things existing at the date of the conract, as to be either by itself or coupled with other circumstances evidence of fraud or of undue advantage taken by the plaintiff;

(*b*) if his assent was obtained by the misrepresentation (whether wilful or innocent), concealment, circumvention or unfair practices, of any party to whom performance would become due under the contract, or by any promise of such party which has not been substantially fulfilled;

(*c*) if his assent was given under the influence of mistake of fact, misapprehension or surprise: Provided that, when the contract provides for compensation in case of mistake, compensation may be made for a mistake within the scope of such provision, and the contract may be specifically enforced in other respects if proper to be so enforced.

Illustrations—

to clause (c)—

A, one of two executors, in the erroneous belief that he had the authority of his co-executor, enters into an agreement for the sale to B of his testator's property B cannot insist on the sale being completed.

A directs an auctioneer to sell certain land. A afterwards revokes the auctioneer's authority as to 20 bighas of this land, but the auctioneer inadvertently sells the whole to B, who has not notice of the revocation. B cannot enforce specific performance of the agreement.

(i) The effect of dismissing a Suit for Specific Performance. **Bar of suit for breach after dismissal.**

29. The dismissal of a suit for specific performance of a contract or part thereof shall bar the plaintiff's right to sue for compensation for the breach of such contract or part, as the case may be.

(Part II.—Of Specific Relief. Chapter II.—Of the Specific Performance of Contracts. Chapter III.—Of the Rectification of Instruments.)

(j) Awards and Directions to execute Settlements.

Application of preceding sections to awards and testamentary directions to execute settlements.

30. The provisions of this Chapter as to contracts shall, *mutatis mutandis,* apply to awards and to directions in a will or codicil to execute a particular settlement.

CHAPTER III.

OF THE RECTIFICATION OF INSTRUMENTS.

When instrument may be rectified.

31. When, through fraud or a mutual mistake of the parties, a contract or other instrument in writing does not truly express their intention, either party, or his representative in interest, may institute a suit to have the instrument rectified; and if the Court find it clearly proved that there has been fraud or mistake in framing the instrument, and ascertain the real intention of the parties in executing the same, the Court may in its discretion rectify the instrument so as to express that intention, so far as this can be done without prejudice to rights acquired by third persons in good faith and for value.

Illustrations.

(*a*) A, intending to sell to B his house and one of three godowns adjacent to it, executes a conveyance prepared by B in which, through B's fraud, all three godowns are included. Of the two godowns which were fraudulently included, B gives one to C and lets the other to D for a rent, neither C nor D having any knowledge of the fraud The conveyance may, as against B and C, be rectified so as to exclude from it the godown given to C; but it cannot be rectified so as to affect D's lease.

(*b*) By a marriage settlement, A, the father of B, the intended wife, covenants with C, the intended husband, to pay to C, his executors, administrators and assigns, during A's life, an annuity of Rs. 5,000 C dies insolvent and the official assignee claims the annuity from A. The Court, on finding it clearly proved that the parties always intended that this annuity should be paid as a provision for B and her children, may rectify the settlement and decree that the assignee has no right to any part of the annuity.

Presumption as to intent of parties.

32. For the purpose of rectifying a contract in writing, the Court must be satisfied that all the parties thereto intended to make an equitable and conscientious agreement.

Principles of rectification.

33. In rectifying a written instrument, the Court may inquire what the instrument was intended to mean, and what were intended to be its legal consequences, and is not confined to the inquiry what the language of the instrument was intended to be.

Specific enforcement of rectified contract.

34. A contract in writing may be first rectified and then, if the plaintiff has so prayed in his plaint and the Court thinks fit, specifically enforced.

Illustrations.

A contracts in writing to pay his attorney B, a fixed sum in lieu of costs. The contract contains mistakes as to the name and rights of the client, which, if construed strictly, would exclude B from all rights under it. B is entitled, if the Court thinks fit, to have it rectified, and to an order for payment of the sum, as if at the time of its execution it had expressed the intention of the parties.

CHAPTER IV.

OF THE RESCISSION OF CONTRACTS

When rescission may be adjudged.

35. Any person interested in a contract in writing[1] may sue to have it rescinded, and such rescission may be adjudged by the Court in any of the following cases, namely :—

(*a*) where the contract is voidable or terminable by the plaintiff;

(*b*) where the contract is unlawful for causes not apparent on its face, and the defendant is more to blame than the plaintiff;

(*c*) where a decree for specific performance of a contract of sale, or of a contract to take a lease, has been made, and the purchaser or lessee makes default in payment of the purchase-money or other sums which the Court has ordered him to pay.

When the purchaser or lessee is in possession of the subject-matter, and the Court finds that such possession is wrongful, the Court may also order him to pay to the vendor or lessor the rents and profits, if any, received by him as such possessor.

In the same case, the Court may, by order in the suit in which the decree has been made and not complied with, rescind the contract, either so far as regards the party in default, or altogether, as the justice of the case may require.

Illustrations—

to (*a*)—

A sells a field to B. There is a right of way over the field of which A has direct personal knowledge, but which he conceals from B. B is entitled to have the contract rescinded.

to (*b*)—

A, an attorney, induces his client B, a Hindu widow, to transfer property to him for the purpose of defrauding B's creditors. Here the parties are not equally in fault, and B is entitled to have the instrument of transfer rescinded.

Rescission for mistake.

36. Rescission of a contract in writing[1] cannot be adjudged for mere mistake, unless the party against whom it is adjudged can be restored to substantially the same position as if the contract had not been made.

Alternative prayer for rescission in suit for specific performance.

37. A plaintiff instituting a suit for the specific performance of a contract in writing may pray in the alternative that, if the contract cannot be specifically enforced, it may be rescinded and delivered up to be cancelled ; and the Court, if it refuses to enforce the contract specifically, may direct it to be rescinded and delivered up accordingly.

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[1] The words "in writing" are rep. wherever the Transfer of Property Act, 1882 (4 of 1882), is in force, *see* ss. 1 and 2 of that Act.

(Part II.—Of Specific Relief. Chapter IV.—Of the Rescission of Contracts. Chapter V.—Of the Cancellation of Instruments.)

Court may require party rescinding to do equity.

38. On adjudging the rescission of a contract, the Court may require the party to whom such relief is granted to make any compensation to the other which justice may require.

CHAPTER V.

Of the Cancellation of Instruments.

When cancellation may be ordered.

39. Any person against whom a written instrument is void or voidable, who has reasonable apprehension that such instrument, if left outstanding, may cause him serious injury, may sue to have it adjudged void or voidable ; and the Court may, in its discretion, so adjudge it and order it to be delivered up and cancelled.

If the instrument has been registered under the Indian Registration Act,[1] the Court shall also send a copy of its decree to the officer in whose office the instrument has been so registered; and such officer shall note on the copy of the instrument contained in his books the fact of its cancellation.

Illustrations.

(*a*) A, the owner of a ship by fraudulently representing her to be seaworthy, induces B, an underwriter, to insure her. B may obtain the cancellation of the policy.

(*b*) A conveys land to B, who bequeaths it to C and dies. Thereupon D gets possession of the land and produces a forged instrument stating that the conveyance was made to B in trust for him. C may obtain the cancellation of the forged instrument.

(*c*) A, representing that the tenants on his land were all at will, sells it to B, and conveys it to him by an instrument, dated the 1st January 1877. Soon after that day, A fraudulently grants to C a lease of part of the lands, dated the 1st October 1876, and procures the lease to be registered under the Indian Registration Act.[1] B may obtain the cancellation of this lease.

(*d*) A agrees to sell and deliver a ship to B, to be paid for by B's acceptances of four bills of exchange, for sums amounting to Rs 30,000, to be drawn by A on B. The bills are drawn and accepted, but the ship is not delivered according to the agreement. A sues B on one of the bills. B may obtain the cancellation of all the bills.

What instruments may be partially cancelled.

40. Where an instrument is evidence of different rights or different obligations, the Court may, in a proper case, cancel it in part and allow it to stand for the residue.

Illustrations.

A draws a bill on B, who endorses it to C, by whom it appears to be endorsed to D, who endorses it to E. C's endorsement is forged. C is entitled to have such endorsement cancelled, leaving the bill to stand in other respects.

Power to require party for whom instrument is cancelled to make compensation.

41. On adjudging the cancellation of an instrument, the Court may require the party to whom such relief is granted to make any compensation to the other which justice may require.

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[1] *See* now the Indian Registration Act, 1908 (16 of 1908).

CHAPTER VI.

OF DECLARATORY DECREES.

Discretion of Court as to declaration of status or right.

42. Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the Court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief :

Bar to such declaration.

Provided that no Court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so.

Explanation—A trustee of property is a "person interested to deny" a title adverse to the title of some one who is not in existence, and for whom, if in existence, he would be a trustee.

Illustration.

(*a*) A is lawfully in possession of certain land The inhabitants of a neighbouring village claim a right of way across the land. A may sue for a declaration that they are not entitled to the right so claimned.

(*b*) A bequeaths his property to B, C and D, "to be equally divided amongst all and each of them if living at the time of my death, then amongst their surviving children" No such children are in existence In a suit against A's executor, the Court may declare whether B C and D took the property absolutely, or only for their lives, and it may also declare the interests of the children before their rights are vested.

(*c*) A covenants that, if he should at any time be entitled to property exceeding one lakh of rupees, he will settle it upon certain trusts. Before any such property accrues, or any persons entitled under the trusts are ascertained, he insitutes a suit to obtain a declaration that the covenant is void for uncertainty. The Court may make the declaration

(*d*) A alienates to B property in which A has merely a life interest. The alienation is invalid as against C, who is entitled as reversioner. The Court may in a suit by C against A and B declare that C is so entitled

(*e*) The widow of a sonless Hindu alienates part of the property of which she is in possession as such The person presumptively entitled to possess the property if he survive her may, in a suit against the alienee, obtain a declaration that the alienation was made without legal necessity and was therefore void beyond the widow's lifetime.

(*f*) A Hindu widow in possession of property adopts a son to her deceased husband. The person presumptively entitled to possession of the property on her death without a son may in a suit against the adopted son, obtain a declaration that the adoption was invalid.

(*g*) A is in possession of certain property. B, alleging that he is the owner of the property, requires A to deliver it to him. A may obtain a declaration of his right to hold the property.

(*h*) A bequeaths property to B for his life, with remainder to B's wife and her children, if any, by B, but if B die without any wife or children, to C. B has a putative wife, D, and children, but C denies that B and D were ever lawfully married. D and her children may, in B's lifetime, institute a suit against C and obtain therein a declaration that they are truly the wife and children of B.

(Part II.—Of Specific Relief. Chapter VI.—Of Declaratory Decrees. Chapter VII.—Of the Appointment of Receivers. Chapter VIII.—Of the Enforcement of Public Duties.)

Effect of declaration.

43. A declaration made under this Chapter is binding only on the parties to the suit, persons claiming through them respectively, and, where any of the parties are trustees, on the persons for whom, if in existence at the date of the declaration, such parties would be trustees.

Illustration.

A, a Hindu, in a suit to which B, his alleged wife, and her mother, are defendants, seeks a declaration that his marriage was duly solemnized and an order for the restitution of his conjugal rights. The Court makes the declaration and order. C, claiming that B is his wife, then sues A for the recovery of B. The declaration made in the former suit is not binding upon C.

CHAPTER VII.

Of the Appointment of Receivers.

Appointment of receivers discretionary.

44. The appointment of a receiver pending a suit is a matter resting in the discretion of the Court.

Reference to Code of Civil Procedure.

The mode and effect of his appointment, and his rights, powers, duties and liabilities, are regulated by the Code of Civil Procedure.[1]

CHAPTER VIII.

Of the Enforcement of Public Duties.

Power to order public servants and others to do certain specific acts.

45. Any of the High Courts of Judicature at [2][Calcutta, Madras and Bombay] may make an order requiring any specific act to be done or forborne, within the local limits of its ordinary original civil jurisdiction, by any person holding a public office, whether of a permanent or a temporary nature, or by any corporation or inferior Court of Judicature :

Provided—

(*a*) that an application for such order be made by some person whose property, franchise or personal right would be injured by the forbearing or doing (as the case may be) of the said specific act;

(*b*) that such doing or forbearing is, under any law for the time being in force, clearly incumbent on such person or Court in his or its public character, or on such corporation in its corporate character;

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[1] *See* now the Code of Civil Procedure, 1908 (Act 5 of 1908).

[2] Subs. by the A. O. for "Fort William, Madras, [Bombay and Rangoon]". The words in brackets were subs. for "and Bombay" by the Repealing and Amending Act, 1923 (11 of 1923).

(Part II.—Of Specific Relief. Chapter VIII.—Of the Enforcement of Public Duties.)

(*c*) that in the opinion of the High Court such doing or forbearing is consonant to right and justice;

(*d*) that the applicant has no other specific and adequate legal remedy; and

(*e*) that the remedy given by the order applied for will be complete.

Nothing in this section shall be deemed to authorize any High Court— **Exemptions from such power.**

[1][(*f*) to make any order binding on [2]* * * the Central Government [3]* * * * * or any [4][State Government];

(*g*) to make any order on any [5]* * * servant of the [6][Government], as such, merely to enforce the satisfaction of a claim upon the [6][Government]; or

(*h*) to make any order which is otherwise expressly excluded by any law for the time being in force.

46. Every application under section 45 must be founded on an affidavit of the person injured, stating his right in the matter in question, his demand of justice and the denial thereof; and the High Court may, in its discretion, make the order applied for absolute in the first instance, or refuse it, or grant a rule to show cause why the order applied for should not be made. **Application how made.** **Procedure thereon.**

If, in the last case, the person, Court or corporation complained of shows no sufficient cause, the High Court may first make an order in the alternative, either to do or forbear the act mentioned in the order, or to signify some reason to the contrary and make an answer thereto by such day as the High Court fixes in this behalf. **Order in alternative.**

47. If the person, Court or corporation to whom or to which such order is directed makes no answer, or makes an insufficient or a false answer, the High Court may then issue a peremptory order to do or forbear the act absolutely. **Peremptory order.**

48. Every order under this Chapter shall be executed, and may be appealed from, as if it were a decree made in the exercise of the ordinary original civil jurisdiction of the High Court. **Execution of, an appeal from, orders.**

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[1] Subs. by the A. O. 1937, for the original cl. which as amended by the Bengal, Bihar and Orissa and Assam Laws Act, 1912 (7 of 1912), s. 7 and Sch. E., and the Repealing and Amending Act, 1927 (10 of 1927), s. 2 and Sch. I, read: "to make any order binding on the Secretary of State for India in Council, on the Governor-General in Council, on the Governor of Madras in Council, on the Governor of Bombay in Council, on the Governor in Council of Fort William in Bengal or on the Governor of Burma in Council".

[2] The words "the Secretary of State" rep. by the A. O. 1948.

[3] The words "the Crown Representative" rep. by the A. O. 1948.

[4] Subs. by the A. O. 1950 for "Provincial Government"

[5] The word "other" rep. by the A. O. 1948.

[6] Subs. by the A. O. 1950 for "Crown".

(Part II.—Of Specific Relief. Chapter VIII.—Of the Enforcement of Public Duties. Part III.—Of Preventive Relief. Chapter IX.—Of Injunctions generally. Chapter X.—Of Perpetual Injunctions.)

Costs.

49. The costs of all applications and orders under this Chapter shall be in the discretion of the High Court.

Saving of power of High Court to issue mandamus.

[1][**50.** Nothing in this Chapter shall affect the power conferred on a High Court by clause (*1*) of article 226 of the Constitution]

Power to frame rules.

51. Each of the said High Courts shall, as soon as conveniently may be, frame rules to regulate the procedure under this Chapter; and until such rules are framed, the practice of such Court as to applications for and grants of writs of *mandamus* shall apply, so far as may be practicable, to applications and orders under this Chapter.

PART III

Of Preventive Relief.

CHAPTER IX.

Of Injunctions Generally.

Preventive relief how granted.

52. Preventive relief is granted at the discretion of the Court by injunction, temporary or perpetual.

Temporary injunctions.

53. Temporary injunctions are such as are to continue until a specified time, or until the further order of the Court. They may be granted at any period of a suit, and are regulated by the Code of Civil Procedure.[2]

Perpetual injunction.

A perpetual injunction can only be granted by the decree made at the hearing and upon the merits of the suit: the defendant is thereby perpetually enjoined from the assertion of a right, or from the commission of an act, which would be contrary to the rights of the plaintiff.

CHAPTER X.

Of Perpetual Injunctions.

Perpetual injunctions when granted.

54. Subject to the other provisions contained in, or referred to by, this Chapter, a perpetual injunction may be granted to prevent the breach of an obligation existing in favour of the applicant, whether expressly or by implication.

When such obligation arises from contract, the Court shall be guided by the rules and provisions contained in Chapter II of this Act.

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[1] Subs. by A. O. 1950 for the original section.

[2] See now the Code of Civil Procedure, 1908 (Act 5 of 1908).

(Part III.—Of Preventive Relief. Chapter X.—Of Perpetual Injunctions.)

When the defendant invades or threatens to invade the plaintiff's right to, or enjoyment of, property, the Court may grant a perpetual injunction in the following cases (namely) :—

(*a*) where the defendant is trustee of the property for the plaintiff;

(*b*) where there exists no standard for ascertaining the actual damage caused, or likely to be caused, by the invasion;

(*c*) where the invasion is such that pecuniary compensation would not afford adequate relief;

(*d*) where it is probable that pecuniary compensation cannot be got for the invasion;

(*e*) where the injunction is necessary to prevent a multiplicity of judicial proceedings.

Explanation.—For the purpose of this section a trademark is property.

Illustrations

(*a*) A lets certain lands to B, and B contracts not to dig sand or gravel thereout. A may sue for an injunction to restrain B from digging in violation of his contract.

(*b*) A trustee threatens a breach of trust. His co-trustees, if any, should, and the beneficial owners may, sue for an injunction to prevent the breach.

(*c*) The directors of a public company are about to pay a dividend[1] out of capital or borrowed money. Any of the shareholders may sue for an injunction to restrain them.

(*d*) The directors of a fire and life-insurance company are about to engage in marine insurances. Any of the shareholders may sue for an injunction to restrain them.

(*e*) A, an executor, through misconduct or insolvency, is bringing the property of the deceased into danger. The Court may grant an injunction to restrain him from getting in the assets.

(*f*) A, a trustee for B, is about to make an imprudent sale of a small part of the trust-property. B may sue for an injunction to restrain the sale, even though compensation in money would have afforded him adequate relief.

(*g*) A makes a settlement (not founded on marriage or other valuable consideration) of an estate on B and his children. A then contracts to sell the estate to C. B or any of his children may sue for an injunction to restrain the sale.

(*h*) In the course of A's employment as a vakil, certain papers belonging to his client, B, come into his possession. A threatens to make these papers public, or to communicate their contents to a stranger. B may sue for an injunction to restrain A from so doing.

(*i*) A is B's medical adviser. He demands money of B which B declines to pay. A then threatens to make known the effect of B's communications to him as a patient. This is contrary to A's duty, and B may sue for an injunction to restrain him from so doing.

(*j*) A, the owner of two adjoining houses, lets one to B and afterwards lets the other to C. A and C begin to make such alterations in the house let to C as will prevent the comfortable enjoyment of the house let to B. B may sue for an injunction to restrain them from so doing.

(*k*) A lets certain arable lands to B for purposes of husbandry, but without any express contract as to the mode of cultivation. Contrary to the mode of cultivation customary in the district, B threatens to sow the lands with seed injurious thereto

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[1] A Railway Company may, however, pay interest on its paid up share capital out of capital, for a certain period and subject to certain restrictions and conditions : *see* the Indian Railway Companies Act, 1895 (10 of 1895), s. 3.

and requiring many years to eradicate. A may sue for an injunction to restrain B from sowing the lands in contravention of his implied contract to use them in a husbandlike manner.

(*l*) A, B and C are partners, the partnership being determinable at will. A threatens to do an act tending to the destruction of the partnership-property. B and C may, without seeking a dissolution of the partnership, sue for an injunction to restrain A from doing the act.

(*m*) A, a Hindu widow in possession of her deceased husband's property, commits destruction of the property without any cause sufficient to justify her in so doing. The heir-expectant may sue for an injunction to restrain her.

(*n*) A, B and C are members of an undivided Hindu family. A cuts timber growing on the family-property, and threatens to destroy part of the family-house and to sell some of the family-utensils. B and C may sue for an injunction to restrain him.

(*o*) A, the owner of certain houses in Calcutta, becomes insolvent. B buys them from the Official Assignee and enters into possession. A persists in trespassing on and damaging the houses, and B is thereby compelled, at considerable expense, to employ men to protect the possession. B may sue for an injunction to restrain further acts of trespass.

(*p*) The inhabitants of a village claim a right of way over A's land. In a suit against several of them, A obtains a declaratory decree that his land is subject to no such right. Afterwards each of the other villagers sues A for obstructing his alleged right of way over the land. A may sue for an injunction to restrain them.

(*q*) A, in an administration-suit to which a creditor, B, is not a party, obtains a decree for the administration of C's assets. B proceeds against C's estate for his debt. A may sue for an injunction to restrain B.

(*r*) A and B are in possession of contiguous lands and of the mines underneath them.[1] A works his mine so as to extend under B's mine and threatens to remove certain pillars which help to support B's mine. B may sue for an injunction to restrain him from so doing.

(*s*) A rings bells or make some other unnecessary noise so near a house as to interfere materially and unreasonably with the physical comfort of the occupier, B. B may sue for an injunction restraining A from making the noise.

(*t*) A pollutes the air with smoke so as to interfere materially with the physical comfort of B and C, who carry on business in a neighbouring house. B and C may sue for an injunction to restrain the pollution.

(*u*) A infringes B's patent. If the Court is satisfied that the patent is valid and has been infringed, B may obtain an injunction to restrain the infringement.

(*v*) A pirates B's copyright. B may obtain an injunction to restrain the piracy, unless the work of which copyright is claimed is libellous or obscene.

(*w*) A improperly uses the trademark of B. B may obtain an injunction to restrain the user, provided that B's use of the trademark is honest.

(*x*) A, a tradesman, holds out B as his partner against the wish and without the authority of B. B may sue for an injunction to restrain A from so doing.

(*y*) A, a very eminent man, writes letters on family-topics to B. After the death of A and B, C, who is B's residuary legatee, proposes to make money by publishing A's letters. D, who is A's executor, has a property in the letters, and may sue for an injunction to restrain C from publishing them.

(*z*) A carries on a manufactory and B is his assistant. In the course of his business, A imparts to B a secret process of value. B afterwards demands money of A, threatening, in case of refusal, to disclose the process to C, a rival manufacturer. A may sue for an injunction to restrain B from disclosing the process.

Mandatory injunctions.

55. When, to prevent the breach of an obligation, it is necessary to compel the performance of certain acts which the Court is capable of

[1] As to the working of mines under land, the surface of which has been acquired by Government, *see* the Land Acquisition (Mines) Act, 1885 (18 of 1885).

enforcing, the Court may in its discretion grant an injunction to prevent the breach complained of, and also to compel performance of the requisite acts.

Illustrations.

(*a*) A, by new buildings, obstructs lights to the access and use of which B has acquired a right under the Indian Limitation Act,[1] Part IV. B may obtain an injunction, not only to restrain A from going on with the buildings, but also to pull down so much of them as obstructs B's lights.

(*b*) A builds a house with eaves projecting over B's land. B may sue for an injunction to pull down so much of the eaves as so project.

(*c*) In the case put as illustration (*i*) to section 54, the Court may also order all written communications made by B, as patient, to A, as medical adviser, to be destroyed.

(*d*) In the case put as illustration (*y*) to section 54, the Court may also order A's letters to be destroyed.

(*e*) A threatens to publish statements concerning B which would be punishable under Chapter XXI of the Indian Penal Code. The Court may grant an injunction to restrain the publication, even though it may be shown not to be injurious to B's property.

XLV of 1860.

(*f*) A, being B's medical adviser, threatens to publish B's written communications with him, showing that B has led an immoral life. B may obtain an injunction to restrain the publication.

(*g*) In the cases put as illustrations (*v*) and (*w*) to section 54 and as illustrations (*e*) and (*f*) to this section, the Court may also order the copies produced by piracy, and the trade marks, statements and communications, therein respectively mentioned, to be given up or destroyed.

Injunction when refused.

56. An injunction cannot be granted—

(*a*) to stay a judicial proceeding pending at the institution of the suit in which the injunction is sought, unless such restraint is necessary to prevent a multiplicity of proceedings;

(*b*) to stay proceedings in a Court not subordinate to that from which the injunction is sought;

(*c*) to restrain persons from applying to any legislative body;

(*d*) to interfere with the public duties of any department of [2][the Central Government [3]* * * or any [4][State] Government], or with the sovereign acts of a Foreign Government;

(*e*) to stay proceedings in any criminal matter;

(*f*) to prevent the breach of a contract the performance of which would not be specifically enforced;

(*g*) to prevent, on the ground of nuisance, an act of which it is not reasonably clear that it will be a nuisance;

(*h*) to prevent a continuing breach in which the applicant has acquiesced;

(*i*) when equally efficacious relief can certainly be obtained by any other usual mode of proceeding except in case of breach of trust;

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[1] *See* now the Indian Limitation Act, 1908 (9 of 1908).

[2] *Subs.* by the A. O. 1937 for "the G. of I. or the L. G.".

[3] The words "the Crown Representative" rep. by the A. O. 1948.

[4] Subs. by the A. O. 1950 for "Provincial".

(*j*) when the conduct of the applicant or his agents has been such as to disentitle him to the assistance of the Court;

(*k*) where the applicant has no personal interest in the matter.

Illustrations.

(*a*) A seeks an injunction to restrain his partner, B, from receiving the partnership-debts and effects. It appears that A had improperly possessed himself of the books of the firm and refused B access to them. The Court will refuse the injunction.

(*b*) A manufactures and sells crucibles, designating them as "patent plumbago-crucibles," though, in fact, they have never been patented. B pirates the designation. A cannot obtain an injunction to restrain the piracy.

(*c*) A sells an article called "Mexican Balm," stating that it is compounded of divers rare essences, and has sovereign medicinal qualities. B commences to sell a similar article to which he gives a name and description such as to lead people into the belief that they are buying A's Mexican Balm. A sues B for an injunction to restrain the sale. B shows that A's Mexican Balm consists of nothing but scented hog's lard. A's use of his description is not an honest one and he cannot obtain an injunction.

Injunction to perform negative agreement.

57. Notwithstanding section 56, clause (*f*), where a contract comprises an affirmative agreement to do a certain act, coupled with a negative agreement, express or implied, not to do a certain act, the circumstance that the Court is unable to compel specific performance of the affirmative agreement shall not preclude it from granting an injunction to perform the negative agreement : provided that the applicant has not failed to perform the contract so far as it is binding on him.

Illustrations.

(*a*) A contracts to sell to B for Rs. 1,000 the good-will of a certain business unconnected with business-premises, and further agrees not to carry on that business in Calcutta. B pays A the Rs. 1,000 but A carries on the business in Calcutta. The Court cannot compel A to send his customers to B, but B may obtain an injunction restraining A from carrying on the business in Calcutta.

(*b*) A contracts to sell to B the good-will of a business. A then sets up a similar business close by B's shop and solicits his old customers to deal with him. This is contrary to his implied contract, and B may obtain, an injunction to restrain A from soliciting the customers, and from doing any act whereby their good-will may be withdrawn from B.

(*c*) A contracts with B to sign for twelve months at B's theatre and not to sing in public elsewhere. B cannot obtain specific performance of the contract to sing, but he is entitled to an injunction restraining A from singing at any other place of public entertainment.

(*d*) B contracts with A that he will serve him faithfully for twelve months as a clerk. A is not entitled to a decree for specific performance of this contract. But he is entitled to an injunction restraining B from serving a rival house as clerk.

(*e*) A contracts with B that, in consideration of Rs. 1,000 to be paid to him by B on a day fixed, he will not set up a certain business within a specified distance. B fails to pay the money. A cannot be restrained from carrying on the business within the specified distance.

SCHEDULE.—[Enactments Repealed.] Rep. by the Amending Act, 1891 (XII of 1891).

[1][THE PRESIDENCY MAGISTRATES (COURT-FEES) ACT, 1877.]

ACT No. IV of 1877.

[*28th February 1877.*]

An Act to regulate the procedure and increase the jurisdiction of the Courts of Magistrates in the Presidency-towns.

WHEREAS it is expedient to consolidate and amend the law regulating the procedure of the Courts of Magistrates in the Presidency-towns and to increase the jurisdiction of such Courts; It is hereby enacted as follows:— Preamble.

1 to **56**. *Rep. by the Code of Criminal Procedure, 1882 (Act X of 1882).*

57. A fee of eight annas shall be paid for every summons or warrant issued by a Presidency Magistrate, except in the case of a summons to attend and give evidence or to produce documents, in which case they shall be paid a fee of four annas : Fees for summonses and warrants.

Provided that such Magistrate may in any case remit any such fee, if he is satisfied that the complainant is unable to pay the same, and shall remit it when the complaint is made by a public servant in the execution of his duty. Power to remit fees.

58 to end. *Rep. by the Code of Criminal Procedure, 1882 (Act X of 1882).*

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[2][THE PUNJAB MURDEROUS OUTRAGES (AMENDMENT) ACT, 1877.]

ACT No. IX of 1877.

[*28th March 1877.*]

An Act to revive and amend Act No. XXIII of 1867.

WHEREAS Act No. XXIII of 1867 (*for the suppression of murderous outrages in certain districts of the Punjab*) received the assent of the Governor General on the 18th day of March 1867, and by section 17 of the said Act was limited to expire in ten years from the date of passing it; And whereas it is expedient to revive the same Act and to amend it in manner hereinafter appearing; It is hereby enacted as follows :— Preamble.

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[1] Short title given by the Indian Short Titles Act, 1897 (14 of 1897).

For the Statement of Objects and Reasons, *see* Gazette of India, 1874, Pt. V, p. 83; for the Report of the Select Committee, *see ibid.*, 1875, Pt. V, p. 39, and *ibid.*, 1876, Pt. V, p. 37; for the discussions in Council, *see ibid.*, 1874, Supplement, p. 418, *ibid.*, 1876, Supplement, pp. 193 and 709; *ibid.*, 1877, Supplement, p. 497.

[2] Short title given by the Amending Act, 1903 (1 of 1903).

Act XXIII of 1867 to be revived.

1. The said Act shall be revived and shall remain in force until the [1][Central Government] otherwise directs.

2. [*Amendment of Act XXIII of 1867.*] *Rep. by the Repealing Act, 1938 (1 of 1938), s. 2 and Sch.*

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[2][THE BROACH AND KAIRA INCUMBERED ESTATES ACT, 1877.]

ACT No. XIV of 1877.

[*28th June 1877.*]

An Act to relieve from incumbrances the estates of Thakurs in Broach and Kaira.

Preamble. Rep. by the Broach and Kaira Incumbered Estates Act, 1881 (XXI of 1881).

1 to 38. [*Application and preliminary inquiry; Order of management; Proof of debts; Scheme for liquidation; Proceedings subsequent to sanction of liquidation scheme; Appeal and revision; Miscellaneous.*] *Rep. by the Broach and Kaira Incumbered Estates Act, 1881 (XXI of 1881).*

Amendment of Bombay Act VI of 1862.

39. [3]* Whereas doubts have been raised as to the validity of Bombay Act No. VI of 1862 (*for the amelioration of the condition of taluqdars in the Ahmedabad Collectorate, and for their relief from debt*) *so far as it* purports to affect the High Court of Judicature at Bombay;

for the purpose of precluding such doubts, it is hereby [4]* enacted that the said Act, so far as it purports to affect the said High Court, shall be deemed to be and to have been valid.

Taluqdari Settlement-officer to be—

40. [5][The Taluqdari Settlement-officer mentioned in the Broach and Kaira Incumbered Estates Act, 1881, section 7,] for the time being shall, unless the [6][State Government] in any case otherwise directs, be— XXI of 1881.

deemed officer under Bombay Act VI of 1862, section 1;

(*a*) deemed to be an officer appointed under section 1 of the said Bombay Act No. VI of 1862 to manage all estates with respect to which a declaration is or has been made and published under the said section;

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[1] Subs. by the A. O. 1937 for "G. G. in C.".

[2] Short title given by the Bombay Short Titles Act, 1921 (Bom. 2 of 1921). For Statement of Objects and Reasons, *see* Gazette of India, 1877, Pt. V, p. 16, and for Proceedings in Council, *see ibid.*, Supplement, pp. 87, 126 and 1863.

[3] The word "and" rep. by the Amending Act, 1894 (4 of 1894).

[4] The word "further" rep., *ibid.*

[5] Subs. by the Broach and Kaira Incumbered Estates Act, 1881 (21 of 1881), s. 2, for "The said Taluqdari Settlement-officer".

[6] Subs. by the A. O. 1950 for "Provincial Government" which had been subs. by the A. O. 1937 for "L. G.".

(*b*) an assistant to the respective Collectors of Ahmedabad, Kaira and Broach. assistant to certain Collectors.

41. Nothing heretofore done by any Taluqdari Settlement officer shall be deemed to be or to have been invalid by reason only of his not having been duly appointed,— Acts of Taluqdari Settlement-officer valid.

(*a*) under section 1 of the said Bombay Act No. VI of 1862 to manage any estates with respect to which a declaration has been made under the said section, or

(*b*) to be a manager under[1] * * [2]Act No. XV of 1871, or

(*c*) to be an assistant to the respective Collectors of Ahmedabad, Kaira and Broach.

THE OPIUM ACT, 1878.

CONTENTS.

PREAMBLE.

SECTIONS.

1. Short title.
   Local extent.
   Commencement.
2. [*Repealed.*]
3. Interpretation-clause.
4. Prohibition of poppy cultivation and possession, etc., of opium.
5. Power to make rules to permit such matters.
6. [*Repealed.*]
7. Warehousing opium.
8. Power to make rules relating to warehouses.
9. Penalty for illegal cultivation of poppy, etc.
10. Presumption in prosecutions under section 9.
11. Confiscation of opium.

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[1] The words "the said" rep. by the Amending Act, 1894 (4 of 1894).

[2] Rep. by s. 2 of this Act.

SECTIONS.

12. Order of confiscation by whom to be made.

13. Power to make rules regarding disposal of things confiscated, and rewards.

14. Power to enter, arrest and seize, on information that opium is unlawfully kept in any enclosed place.

15. Power to seize opium in open places.

Power to detain, search and arrest.

16. Searches how made.

17. Officers to assist each other.

18. Vexatious entries, searches, seizures and arrests.

19. Issue of warrants.

20. Disposal of person arrested or thing seized.

21. Report of arrests and seizures.

22. [*Repealed.*]

23. Recovery of arrears of fees, duties, etc.

24. Farmer may apply to Collector or other officer to recover amount due to him by licensee.

25. Recovery of penalties due under bond.

SCHEDULE.—[*Repealed.*]

ACT No. I of 1878.[1]

[*9th January 1878.*]

An Act to amend the law relating to Opium.

Preamble. WHEREAS it is expedient to amend the law relating to opium; It is hereby enacted as follows :—

Short title. **1.** This Act may be called the Opium Act, 1878.

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[1] For the Statement of Objects, and Reasons, *see* Gazette of India, 1877, Pt. V, p. 645; for Proceedings in Council, *see ibid.*, Supplement, pp. 3015 and 3030; *ibid.*, 1878, pp. 53 and 80.

The Act has been declared to be in force in the Sonthal Parganas by the Sonthal Parganas Settlement Regulation, 1872 (3 of 1872), s. 3; in the Khondmals District by the Khondmals Laws Regulation, 1936 (4 of 1936), s. 3 and Sch.; and in the Angul District by the Angul Laws Regulation, 1936 (5 of 1936), s. 3 and Sch.

It has been amended in its application to—

Assam by Assam Act 1 of 1933;
Bengal by Bengal Act 5 of 1933;
Bombay by Bombay Acts 2 of 1923, 14 of 1930 and 11 of 1934;
C. P. by C. P. Act 1 of 1929;
Madras by Madras Act 34 of 1947;
Orissa by Orissa Act 2 of 1939; and
Punjab by Punjab Act 3 of 1925.

It shall extend to such local areas[1] as the [2][Government of a Part A State or Part C State] may, by notification in the [3][Official Gazette], from time to time direct; Local extent.

And it shall come into force in each of such areas on such day as the [2][Government of a Part A State or a Part C State] in like manner directs in this behalf. Commencement.

2. [*Repeal and amendment of enactments.*] *Rep. by the Amending Act, 1891* (*XII of* 1891), *and the Amending Act, 1894* (*IV of 1894*).

3. In this Act, unless there be something repugnant in the subject or context,— Interpretation-clause.

[4]["opium" means—

(*i*) the capsules of the poppy (*Papaver somniferum* L.);

(*ii*) the spontaneously coagulated juice of such capsules which has not been submitted to any manipulations other than those necessary for packing and transport; and

(*iii*) any mixture, with or without neutral materials, of any of the above forms of opium,

but does not include any preparation containing not more than 0·2 per cent. of morphine, or a manufactured drug as defined in section 2 of the Dangerous Drugs Act, 1930;] II of 1930

[5]"Magistrate" means, in the Presidency-towns, a Presidency Magistrate, and elsewhere, a Magistrate of the first class or (when specially empowered by the [6][State Government] to try cases under this Act) a Magistrate of the second class;

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[1] It has been so extended to the following local areas from the date specified against each:—

(1) Ajmer-Merwara, from 2nd August, 1879, *see* Gazette of India, 1879, p. 466;
(2) Assam from 1st April, 1879, *see ibid.*, 1879, p. 259;
(3) Bengal, from 21st August, 1878, *see ibid.*, 1878, p. 526;
(4) Bombay Presidency, from 1st April, 1878, *see ibid.*, 1878, p. 231;
(5) Central Provinces, from 28th June, 1879, *see ibid.*, 1879, p. 441;
(6) Coorg, from 1st April, 1882, *see ibid.*, 1882, Pt. I, p. 135;
(7) Madras Presidency, from 1st July, 1880, *see ibid.*, 1880, Pt. I, p. 513;
(8) Punjab, from 1st April, 1880, *see ibid.*, 1880, Pt. I, p. 16; and
(9) United Provinces from 2nd February, 1878, *see ibid.*, 1878, Pt. I, p. 68.

[2] Subs. by the A. O. 1950 for "Provincial Government" which had been subs. by the A. O. 1937 for "G. G. in C.".

[3] Subs. by the A. O. 1937 for "Gazette of India".

[4] Subs. by the Dangerous Drugs Act, 1930 (2 of 1930), s. 40 and Sch. II, for the original definition.

[5] *Cf.* definition in the last cl. of s. 3 of the Code of Criminal Procedure, 1898 (5 of 1898).

[6] Subs. by the A. O. 1950 for "Provincial Government" which had been subs. by the A. O. 1937 for "L. G.".

[1][" import" means to import inter-provincially, as defined in clause (*j*) of section 2 of the Dangerous Drugs Act, 1930; II of 1930.

" export" means to export inter-provincially, as defined in clause (*l*) of section 2 of the Dangerous Drugs Act, 1930; and]

" transport" means to remove from one place to another within the territories administered by the same [2][State Government];

[3][" sale" does not include sales for export across customs frontiers as defined by the Central Government, and "sell" shall be construed accordingly]-

Prohibition of poppy cultivation and possession, etc., of opium.

4. Except as permitted by this Act, or by any other enactment relating to opium for the time being in force, or by rules framed under this Act or under any such enactment, no one shall—

[4]* * * *

[4][(*a*)] possess opium;

[4][(*b*)] transport opium;

[4][(*c*)] import or export opium; or

[4][(*d*)] sell opium.

Power to make rules to permit such matters.

5. The [2][State Government][5]* * * * may, from time to time, by notification in the [6][Official Gazettee], make rules consistent with this Act, to permit absolutely, or subject to the payment of duty or to any other conditions, and to regulate, within the whole or any specified part of the territories administered by such Government, all or any of the following matters:—

[4]* * * *

[4][(*a*)]the possession of opium;

[4][(*b*)] the transport of opium;

[4][(*c*)] the importation or exportation of opium; and

[4][(*d*)] the sale of opium and the farm of duties leviable on the sale of opium by retail:

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[1] Subs. by the Dangerous Drugs Act, 1930 (2 of 1930), s. 40 and Sch. II, for the original definition.

[2] Subs. by the A. O. 1950 for "Provincial Government" which had been subs. by the A. O. 1937 for "L. G."

[3] Ins. by the A. O. 1937.

[4] Sub-clauses (*a*) and (*b*), relating to the cultivation of the poppy and the manufacture of opium, were rep., and the subsequent sub-clauses re-lettered, by Act 2 of 1930, s. 40 and Sch. II.

[5] The words "subject to the control of the G. G. in C." rep. by the A. O. 1937.

[6] Subs. by the A. O. 1937 for "local Gazette".

Provided that no duty shall be levied under any such rule or any opium imported and on which a duty is imposed by or under the law relating to sea-customs[1] for the time being on force or under [2][the Dangerous Drugs Act, 1930].

II of 1930

6. [*Duty on opium imported by land.*] *Rep. by the Dangerous Drugs Act, 1930 (II of 1930), s. 40 and Sch. II.*

Warehousing opium.

[3][7. The [4][State] Government may, by notification published in the Official Gazette, declare any place to be a warehouse for all or any opium legally imported, whether before or after the payment of any duty leviable thereon, into the territories administered by that Government, or into any specified part thereof, and intended to be exported thence.

So long as the declaration remains in force, the owner of all such opium shall be bound to deposit it in that warehouse.]

Power to make rules relating to warehouses.

8. The [5][State Government][6]* * * * * may, from time to time, by notification in the [7][Official Gazette] make rules consistent with this Act to regulate the safe custody of opium ware-housed under section 7; the levy of fees for such warehousing; the removal of such opium for sale or exportation; and the manner in which it shall be disposed of, if any duty or fees leviable on it be not paid within twelve months from the date of warehousing the same.

Penalty for illegal cultivation of poppy, etc.

9. Any person who, in contravention of this Act, or of rules made and notified under section 5 or section 8,—

[8]* * * *

[8][(*a*)] possesses opium, or

[8][(*b*)] transports opium, or

[8][(*c*)] imports or exports opium, or

[8][(*d*)] sells opium, or

[8][(*e*)] omits to warehouse opium, or removes or does any act in respect of warehoused opium,

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[1] *See* the Sea Customs Act, 1878 (8 of 1878), Ch. VIII.

[2] Subs. by the Dangerous Drugs Act, 1930 (2 of 1930), s. 40 and Sch. II, for "section 6".

[3] Subs. by the A. O. 1937 for the original section.

[4] Subs. by the A. O. 1950 for "Provincial".

[5] Subs. by the A. O. 1950 for "Provincial Government" which had been subs. by the A. O. 1937 for "L. G.".

[6] The words "subject to the control of the G. G. in C." rep. by the A. O. 1937.

[7] Subs. by the A. O. 1937 for "local Gazette".

[8] Sub-clauses (*a*) and (*b*), relating to the cultivation of poppy and the manufacture of opium, were rep., and the subsequent sub-clauses re-lettered, by the Dangerous Drugs Act, 1930 (2 of 1930), s. 40 and Sch. II.

and any person who otherwise contravenes any such rule,

shall, on conviction before a Magistrate, be punished for each such offence with imprisonment for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both;

and, where a fine is imposed, the convicting Magistrate shall direct the offender to be imprisoned in default of payment of the fine for a term which may extend to six months, and such imprisonment shall be in excess of any other imprisonment to which he may have been sentenced.

Presumption in prosecutions under section 9.

10. In prosecutions under section 9, it shall be presumed, until the contrary is provided, that all opium for which the accused person is unable to account satisfactorily is opium in respect of which he has committed an offence under this Act.

Confiscation of opium.

11. In any case in which an offence under section 9 has been committed,—

[1]* * * * *

[1][(*a*)] the opium in respect of which any offence under the same section has been committed.

[1][(*b*)] where in the case of an offence under clause [2][(*b*) or (*c*)] of the same section, the offender is transporting, importing or exporting any opium exceeding the quantity (if any) which he is permitted to transport, import or export, as the case may be, the whole of the opium which he is transporting, importing or exporting,

[1][(*c*)] where, in the case of an offence under clause [3][(*d*)] of the same section, the offender has in his possession any opium other than the opium in respect of which the offence has been committed, the whole of such other opium.

shall be liable to confiscation.

The vessels, packages and coverings in which any opium liable to confiscation under this section is found, and the other contents (if any) of the vessel or package in which such opium may be concealed, and the animals and conveyances used in carrying it, shall likewise be liable to confiscation.

Order of confiscation by whom to be made.

12. When the offender is convicted, or when the person charged with an offence in respect of any opium is acquitted, but the Magistrate decides that the opium is liable to confiscation, such confiscation may be ordered by the Magistrate.

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[1] Sub-clause (*a*), which read. "(*a*) the poppy so cultivated", was rep., and the subsequent sub-clauses were re-lettered, by the Dangerous Drugs Act, 1930 (2 of 1930), s. 40 and Sch. II.

[2] Subs. for "(*d*) or (*e*)", *ibid.*

[3] Subs. for "(*f*)", *ibid.*

Whenever confiscation is authorized by this Act, the officer ordering it may give the owner of the thing liable to be confiscated an option to pay, in lieu of confiscation, such fine as the officer thinks fit.

When an offence against this Act has been committed, but the offender is not known or cannot be found, or when opium not in the possession of any person cannot be satisfactorily accounted for, the case shall be inquired into and determined by the Collector of the district or Deputy Commissioner, or by any other officer authorized by the [1][State Government] in this behalf, either personally or in right of his office, who may order such confiscation: Provided that no such order shall be made until the expiration of one month from the date of seizing the things intended to be confiscated or without hearing the persons (if any) claiming any right thereto, and the evidence (if any) which they produce in support of their claims.

Power to make rules regarding disposal of things confiscated, and rewards.

13. The [1][State Government] may, [2]* * * * from time to time, by notification in the [3][Official Gazette], make rules consistent with this Act to regulate—

(*a*) the disposal of all things confiscated under this Act; and

(b) the rewards to be paid to officers and informers[4]* * * *

Power to enter, arrest and seize, on information that opium is unlawfully kept in any enclosed place.

14. Any officer of any of the departments of Excise, Police, Customs, Salt, Opium or Revenue superior in rank to a peon or constable, who may in right of his office be authorized by the [1][State Government] in this behalf, and who has reason to believe, from personal knowledge or from information given by any person and taken down in writing, that opium liable to confiscation under this Act is [5]* * * kept or concealed in any building, vessel or enclosed place, may, between sunrise and sunset,—

(*a*) enter into any such building, vessel or place;

(*b*) in case of resistance, break open any door and remove any other obstacle to such entry;

(*c*) seize such opium [6]* * * and any other thing which he has reason to believe to be liable to confiscation under section 11 or any other law for the time being in force relating to opium; and

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[1] Subs. by the A. O. 1950 for "Provincial Government" which had been subs. by the A. O. 1937 for "L. G.".

[2] The words "with the previous sanction of the G. G. in C." rep. by s. 2 and Sch. I of the Devolution Act, 1920 (38 of 1920).

[3] Subs. by the A. O. 1937 for "local Gazette".

[4] The words "out of the proceeds of fines and confiscation under this Act" rep. by the A. O. 1937.

[5] The word "manufactured" rep. by the Dangerous Drugs Act, 1930 (2 of 1930), s. 40 and Sch. II.

[6] The words "and all materials used in the manufacture thereof" rep., *ibid.*

(*d*) detain and search, and, if he think proper, arrest, any person whom he has reason to believe to be guilty of any offence relating to such opium under this or any other law for the time being in force.

Power to seize opium in open places.

15. Any officer of any of the said departments may—

(*a*) seize, in any open place or in transit, any opium or other thing which he has reason to believe to be liable to confiscation under section 11 or any other law for the time being in force relating to opium;

Power to detain, search and arrest.

(*b*) detain and search any person whom he has reason to believe to be guilty of any offence against this or any other such law, and, if such person has opium in his possession, arrest him and any other persons in his company.

Searches how made.

16. All searches under section 14 or section 15 shall be made in accordance with the provisions of the Code of Criminal Procedure[1]

Officers to assist each other.

17. The officers of the several departments mentioned in section 14 shall, upon notice given or request made, be legally bound to assist each other in carrying out the provisions of this Act.

Vexatious entries, searches, seizures and arrests.

18. Any officer of any of the said departments who, without reasonable ground of suspicion, enters or searches, or causes to be entered or searched, any building, vessel or place,

or vexatiously and unnecessarily seizes the property of any person on the pretence of seizing or searching for any opium or other thing liable to confiscation under this Act,

or vexatiously and unnecessarily detains, searches or arrests any person,

shall, for every such offence, be punished with fine not exceeding five hundred rupees.

Issue of warrants.

19. The Collector of the district, Deputy Commissioner or other officer authorized by the [2][State Government] in this behalf, either personally or in right of his office, or a Magistrate, may issue his warrant for the arrest of any person whom he has reason to believe to have committed an offence relating to opium, or for the search, whether by day or night, of any building or vessel or place in which he has reason to believe opium liable to confiscation to be kept or concealed.

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[1] *See* now the Code of Criminal Procedure, 1898 (Act 5 of 1898).

[2] *See* footnote 1 on p. 377, *supra*.

All warrants issued under this section shall be executed in accordance with the provisions of the Code of Criminal Procedure.[1]

20. Every person arrested, and thing seized, under section 14 or section 15, shall be forwarded without delay to the officer in charge of the nearest police-station; and every person arrested and thing seized under section 19 shall be forwarded without delay to the officer by whom the warrant was issued.

Disposal of person arrested or thing seized.

Every officer to whom any person or thing is forwarded under this section shall, with all convenient despatch, take such measures as may be necessary for the disposal according to law of such person or thing.

21. Whenever any officer makes any arrest or seizure under this Act, he shall, within forty-eight hours next after such arrest or seizure, make a full report of all the particulars of such arrest or seizure to his immediate official superior.

Report of arrests and seizures.

22. [*Procedure in case of illegal poppy cultivation.*] *Rep. by the Dangerous Drugs Act, 1930 (II of 1930), s.* 40 *and Sch. II.*

23. Any arrear of any fee or duty imposed under this Act or any rule made hereunder,

Recovery of arrears of fees, duties, etc.

and any arrear due from any farmer of opium-revenue,

may be recovered from the person primarily liable to pay the same to the [2][State Government] or from his surety (if any) as if it were an arrear of land-revenue.

24. When any amount is due to a farmer of opium-revenue from his licensee, in respect of a license, such farmer may make an application to the Collector of the district, Deputy Commissioner or other officer authorized by the [3][State Government] in this behalf, praying such officer to recover, such amount on behalf of the applicant; and, on receiving such application, such Collector, Deputy Commissioner or other officer may in his discretion recover such amount as if it were an [4]arrear of land-revenue, and shall pay any amount so recovered to the applicant:

Farmer may apply to Collector or other officer to recover amount due to him by licensee.

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[1] *See* now the Code of Criminal Procedure, 1898 (5 of 1898).

[2] Subs. by A. O. 1950 for "Provincial Government" which had been subs. by A. O. 1937 for "Govt.".

[3] *See* footnote 1 on p. 377, *supra*.

[4] *See* the Revenue Recovery Act, 1890 (I of 1890).

Provided that the execution of any process issued by such Collector, [1][Deputy Commissioner] or other officer for the recovery of such amount shall be stayed if the licensee institutes a suit in the Civil Court to try the demand of the farmer, and furnishes security to the satisfaction of such officer for the payment of the amount which such Court may adjudge to be due from him to such farmer:

Provided also that nothing contained in this section or done there-under shall affect the right of any farmer of opium-revenue to recover by suit in the Civil Court or otherwise any amount due to him from such licensee.

Recovery of penalties due under bond.

25. When any person, in compliance with any rule made hereunder, gives a bond for the performance of any duty or act, such duty or act shall be deemed to be a public duty, or an act in which the public are interested, as the case may be, within the meaning of the Indian Contract Act, 1872, IX of 1872. section 74; and, upon breach of the condition of such bond by him, the whole sum named therein as the amount to be paid in case of such breach may be recovered from him as if it were an arrear of land-revenue.

SCHEDULE.—[Enactments Repealed.] Rep. by the Amending Act, 1891 (XII of 1891.)

THE INDIAN TREASURE-TROVE ACT, 1878.

CONTENTS.

PREAMBLE.

SECTIONS.

1. Short title.

   Extent.

2. [*Repealed.*]

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[1] Subs. by the Amending Act, 1891 (12 of 1891), Sch. II for "Deputy Collector".

SECTIONS.

3. Interpretation-clause.
"Treasure."
"Collector."
"Owner."

4. Notice by finder of treasure.

5. Notification requiring claimants to appear.

6. Forfeiture of right on failure to appear.

7. Matters to be enquired into and determined by the Collector.

8. Time to be allowed for suit by person claiming the treasure.

9. When treasure may be declared ownerless.
Appeal against such declaration.

10. Proceedings subsequent to declaration.

11. When no other person claims as owner of place treasure to be given to finder.

12. When only one such person claims and his claim is not disputed, treasure to be divided, and shares to be delivered to parties.

13. In case of dispute as to ownership of place, proceedings to be stayed.

14. Settlement of such dispute.

15. and division thereupon.

16. Power to acquire the treasure on behalf of Government.

17. Decision of Collector final, and no suit to lie against him for acts done *bona fide*.

18. Collector to exercise powers of Civil Court.

19. Power to make rules.

20. Penalty on finder failing to give notice, etc.

21. Penalty on owner abetting offence under section 20.

SCHEDULE.—[*Repealed.*]

(*Preliminary.*)

ACT No. VI of 1878.[1]

[*13th February 1878.*]

An Act to amend the law relating to Treasure-trove.

WHEREAS it is expedient to amend the law relating to treasure-trove; It is hereby enacted as follows:— Preamble.

Preliminary.

1. This Act may be called the Indian Treasure-trove Act, 1878. Short title.

It extends to [2][the whole of India except ~~Part B States~~]. Extent.

[3]* * * *

2. [*Repeal of enactments.*] *Rep. by the Amending Act, 1891 (XII of 1891).*

3. In this Act— Interpretation-clause.

"treasure" means anything of any value hidden in the soil, or in anything affixed thereto: "Treasure."

"Collector" means (1) any Revenue-officer in independent charge of a district, and (2) any officer appointed by the [4][State Government] to perform the functions of a Collector under this Act. "Collector."

When any person is entitled, under any reservation in an instrument of transfer of any land or thing affixed thereto, to treasure in such land or thing, he shall, for the purposes of this Act, be deemed to be the owner of such land or thing. "Owner"

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[1] For the Statement of Objects and Reasons, *see* Gazette of India, 1876, Pt. V, p. 1463; for discussions in Council, *see ibid.*, Supplement, pp. 1288 and 1326; *ibid.*, 1878, pp. 207 and 287.

This Act has been declared to be in force in—

Sonthal Parganas by the Sonthal Parganas Settlement Regulation (3 of 1872), s. 3;

Khondmals District by the Khondmals Laws Regulation, 1936 (4 of 1936), s. 3 and Sch.; and

Angul District by the Angul Laws Regulation, 1936 (5 of 1936), s. 3 and Sch.

It has also been declared, by notification under s. 3 (*a*) of the Scheduled Districts Act, 1874 (14 of 1874), to be in force in the Scheduled Districts of Hazaribagh, Lohardaga and Manbhum, and Pargana Dhalbhum and the Kolhan in the District of Singbhum—*see* Gazette of India, 1881, Pt. I, p. 504. (The District of Lohardaga included at that time the present District of Palamau, which was separated in 1894; Lohardaga is now called the Ranchi District; *see* Calcutta Gazette, 1899, Pt. I, p. 44).

[2] Subs. by the A. O. 1950 for "all the Provinces of India" which had been subs. by the A. O. 1948 for "the whole of British India".

[3] The words "And it shall come into force at once" rep. by the Repealing and Amending Act, 1914 (10 of 1914).

[4] *See* footnote 1 on p. 377, *supra*.

(*Procedure on finding Treasure.*)

Procedure on finding Treasure.

Notice by finder of treasure.

4. Whenever any treasure exceeding in amount or value ten rupees is found, the finder shall, as soon as practicable, give to the Collector notice in writing—

(*a*) of the nature and amount or approximate value of such treasure;

(*b*) of the place in which it was found;

(*c*) of the date of the finding;

and either deposit the treasure in the nearest Government treasury, or give the Collector such security as the Collector thinks fit, to produce the treasure at such time and place as he may from time to time require.

Notification requiring claimants to appear.

5. On receiving a notice under section 4, the Collector shall, after making such enquiry (if any) as he thinks fit, take the following steps (namely):—

(*a*) he shall publish a notification in such manner as the [1][State Government] from time to time prescribes in this behalf, to the effect that on a certain date (*mentioning it*) certain treasure (*mentioning its nature, amount and approximate value*) was found in a certain place (*mentioning it*); and requiring all persons claiming the treasure, or any part thereof, to appear personally or by agent before the Collector on a day and at a place therein mentioned, such day not being earlier than four months, or later than six months, after the date of the publication of such notification;

(*b*) when the place in which the treasure appears to the Collector to have been found was at the date of the finding in the possession of some person other than the finder, the Collector shall also serve on such person a special notice in writing to the same effect.

Forfeiture of right on failure to appear.

6. Any person having any right to such treasure or any part thereof, as owner of the place in which it was found or otherwise, and not appearing as required by the notification issued under section 5, shall forfeit such right,

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[1] *See* footnote 1 on p. 377, *supra*.

(*Procedure on finding Treasure.*)

Matters to be enquired into and determined by the Collector.

7. On the day notified under section 5, the Collector shall cause the treasure to be produced before him, and shall enquire as to and determine—

(a) the person by whom, the place in which, and the circumstances under which, such treasure was found; and

(*b*) as far as is possible, the person by whom, and the circumstances under which, such treasure was hidden.

Time to be allowed for suit by person claiming the treasure.

8. If, upon an enquiry made under section 7, the Collector sees reason to believe that the treasure was hidden within one hundred years before the date of the finding, by a person appearing as required by the said notification and claiming such treasure, or by some other person under whom such person claims, the Collector shall make an order adjourning the hearing of the case for such period as he deems sufficient to allow of a suit being instituted in the Civil Court by the claimant, to establish his right.

When treasure may be declared ownerless.

9. If upon such enquiry the Collector sees no reason to believe that the treasure was so hidden; or

if, where a period is fixed under section 8, no suit is instituted as aforesaid within such period to the knowledge of the Collector; or

if such suit is instituted within such period, and the plaintiff's claim is finally rejected;

the Collector may declare the treasure to be ownerless.

Appeal against such declaration.

Any person aggrieved by a declaration made under this section may appeal against the same within two months from the date thereof to the Chief Controlling Revenue-authority[1].

Subject to such appeal, every such declaration shall be final and conclusive.

Proceedings subsequent to declaration.

10. When a declaration has been made in respect of any treasure under section 9, such treasure shall, in accordance with the provisions hereinafter contained, either be delivered to the finder thereof, or be divided between him and the owner of the place in which it has been found in manner hereinafter provided.

When no other person claims as owner of place. treasure to be given to finder.

11. When a declaration has been made in respect of any treasure as aforesaid, and no person other than the finder of such treasure has appeared as required by the notification published under section 5 and claimed a share of the treasure as owner of the place in which it has been found, the Collector shall deliver such treasure to the finder thereof.

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[1] For definition of Chief Controlling Revenue-authority, *see* the General Clauses Act, 1897 (10 of 1897), s. 3 (10).

(*Procedure on finding Treasure.*)

12. When a declaration has been made as aforesaid in respect of any treasure, and only one person other than the finder of such treasure has so appeared and claimed, and the claim of such person is not disputed by the finder, the Collector shall proceed to divide the treasure between the finder and the person so claiming according to the following rule (namely):— **When only one such person claims and his claim is not disputed, treasure to be divided,**

If the finder and the person so claiming have not entered into any agreement then in force as to the disposal of the treasure, three-fourths of the treasure shall be allotted to such finder and the residue to such person. If such finder and such person have entered into any such agreement, the treasure shall be disposed of in accordance therewith:

Provided that the Collector may, in any case, if he thinks fit, instead of dividing any treasure as directed by this section,—

(*a*) allot to either party the whole or more than his share of such treasure, on such party paying to the Collector for the other party such sum of money as the Collector may fix as the equivalent of the share of such other party, or of the excess so allotted, as the case may be; or

(*b*) sell such treasure or any portion thereof by public auction, and divide the sale-proceeds between the parties according to the rule hereinbefore prescribed:

Provided also that, when the Collector has by his declaration under section 9 rejected any claim made under this Act by any person other than the said finder or person claiming as owner of the place in which the treasure was found, such division shall not be made until after the expiration of two months without an appeal having been presented under section 9 by the person whose claim has been so rejected, or when an appeal has been so presented, after such appeal has been dismissed.

When the Collector has made a division under this section, he shall deliver to the parties the portions of such treasure, or the money in lieu thereof, to which they are respectively entitled under such division. **and shares to be delivered to parties.**

13. When a declaration has been made as aforesaid in respect of any treasure, and two or more persons have appeared as aforesaid and each of them claimed as owner of the place where such treasure was found, or the right of any person who has so appeared and claimed is disputed by the finder of such treasure, the Collector shall retain such treasure and shall make an order staying his proceedings with a view to the matter being enquired into and determined by a Civil Court. **In case of dispute as to ownership of place, proceedings to be stayed.**

14. Any person who has so appeared and claimed may, within one month from the date of such order, institute a suit in the Civil Court to **Settlement of such dispute,**

obtain a decree declaring his right; and in every such suit the finder of the treasure and all persons disputing such claim before the Collector shall be made defendants.

and division thereupon.

15. If any such suit is instituted and the plaintiff's claim is finally established therein, the Collector shall, subject to the provisions of section 12, divide the treasure between him and the finder.

If no such suit is instituted as aforesaid, or if the claims of the plaintiffs in all such suits are finally rejected, the Collector shall deliver the treasure to the finder.

Power to acquire the treasure on behalf of Government.

16. The Collector may, at any time after making a declaration under section 9, and before delivering or dividing the treasure as hereinbefore provided, declare by writing under his hand his intention to acquire on behalf of the Government the treasure, or any specified portion thereof, by payment to the persons entitled thereto of a sum equal to the value of the materials of such treasure or portion, together with one-fifth of such value, and may place such sum in deposit in his treasury to the credit of such persons; and thereupon such treasure or portion shall be deemed to be the property of Government, and the money so deposited shall be dealt with, as far as may be, as if it were such treasure or portion.

Decision of Collector final, and no suit to lie against him for acts done *bona fide*.

17. No decision passed or act done by the Collector under this Act shall be called in question by any Civil Court, and no suit or other proceeding shall lie against him for anything done in good faith in exercise of the powers hereby conferred.

Collector to exercise powers of Civil Court.

18. A Collector making any enquiry under this Act may exercise any power conferred by the Code of Civil Procedure[1] on a Civil Court for the trial of suits.

Power to make rules.

19. The [2][State Government] may, from time to time, make rules consistent with this Act to regulate proceedings hereunder.

Such rules shall, on being published in the [3][Official Gazette], have the force of law.

Penalties.

Penalty on finder failing to give notice, etc.

20. If the finder of any treasure fails to give the notice, or does not either make the deposit or give the security, required by section 4, or alters or attempts to alter such treasure so as to conceal its identity, the

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[1] *See* now the Code of Civil Procedure, 1908 (Act 5 of 1908).

[2] *See* footnote 1 on p. 377, *supra*.

[3] Subs. by the A. O. 1937 for "local Gazette".

share of such treasure, or the money in lieu thereof to which he would otherwise be entitled, shall vest in [1][Government],

and he shall, on conviction before a Magistrate, be punished with imprisonment for a term which may extend to one year, or with fine, or with both.

21.* If the owner of the place in which any treasure is found abets, within the meaning of the Indian Penal Code, any offence under section 20, the share of such treasure, or the money in lieu thereof to which he would otherwise be entitled, shall vest in [1][Government], **Penalty on owner abetting offence under section 20.**

XLV of 1860.

and he shall, on conviction before a Magistrate, be punished with imprisonment which may extend to six months, or with fine, or with both.

SCHEDULE.—[Rep. by the Amending Act, 1891 (XII of 1891).]

THE SEA CUSTOMS ACT, 1878.

CONTENTS

PREAMBLE.

CHAPTER I.

SECTIONS.

PRELIMINARY.

1. Short title.
   Local extent.
   Commencement.
2. [*Repealed.*]
3. Interpretation.
4. Agent of owner of goods to be deemed owner for certain purposes.
5. When ship's agent may act for master.

CHAPTER II.

APPOINTMENT AND POWERS OF OFFICERS, ETC.

6. Appointment of Customs-officers.
7. [*Repealed.*]

---

[1] Subs. by the A. O. 1950 for "Her Majesty".

SECTIONS.

8. Performance of duties of Customs-collector, where no custom-house.
9. Power to make rules.
10. Customs-officers exempted from service on jury or inquest or as assessors.

CHAPTER III.

APPOINTMENT OF PORTS, WHARVES, CUSTOM-HOUSES, WAREHOUSES AND BOARDING AND LANDING- STATIONS.

11. Power to appoint ports, wharves and custom-houses.
12. Power to declare places to be ports for coasting-trade.
13. Power to declare that foreign ports shall be regarded as customs-ports for certain purposes.
14. Power to declare warehousing ports.
15. Power to appoint public warehouses.
16. Power to license private warehouses.
Form of application for license.
Revocation of license.
17. Stations for Customs-officers to board and land.

CHAPTER IV.

PROHIBITIONS AND RESTRICTIONS OF IMPORTATION AND EXPORTATION.

18. Prohibitions.
19. Power to prohibit or restrict importation or exportation of goods.
19A. Detention and confiscation of goods whose importation is prohibited.

CHAPTER V.

LEVY OF, AND EXEMPTION FROM, CUSTOMS-DUTIES.

20. Goods dutiable.
21. Goods partially composed of dutiable articles.
22. Power to fix tariff-values.
23. General power to exempt from Customs-duties.
Power to authorize, in special cases, exemption from duty.
24. Baggage in actual use.

SECTIONS.

25. Re-imported articles of country-produce.
Proviso.
26. Excise-duty on importation of certain country goods.
27. Goods derelict and wreck.
28. Country provisions and stores may be shipped free of duty.
29. Owner to declare real value, etc., of goods in bill of entry or shipping bill.
Power to require production of invoice, etc.
30. "Real value" defined.
31. Examination of *ad valorem* goods.
32. Procedure where such goods are undervalued by owner.
33. Abatement allowed on damaged goods.
Reduced duty how determined.
34. Deterioration of tariff-value goods.
34A. Abatement of duty on goods on which duty is levied on quantity.
35. No abatement when duty is levied on quantity.
36. Restriction on amendment of bill of entry or shipping bill.
37. Alteration of import-duty or tariff valuation.
38. Alteration of export-duty or tariff valuation.
39. Payment of duties short-levied or erroneously refunded.
40. No refund of charges erroneously levied or paid, unless claimed within three months.
41. Power to give credit for, and keep account-current of, duties and charges.

CHAPTER VI.

DRAWBACK.

42. Drawback allowable on re-export.
Conditions for grant of drawback.
43. Drawback on goods exported to customs-port and thence to foreign port.
Proviso.
43A. Drawback on goods taken into use between importation and re-exportation.
44. Drawback of duties on wine and spirit allowed for officers of Navy.
45. Persons entering such wine or spirit for drawback to declare name and rank of officer claiming same.

SECTIONS.

46. Transfer of wine or spirit from one Naval officer to another
47. Provisions and stores for Her Majesty's Navy.
48. Indian Navy.
49. Power to declare what goods are identifiable,
and to prohibit drawback in case of specified foreign port.
50. When no drawback allowed.
51. Time to claim drawback.
When payment made.
52. Declaration by parties claiming drawback.

CHAPTER VII.

ARRIVAL AND DEPARTURE OF VESSELS.

Arrival and Entry of Vessels inwards.

53. Power to fix places beyond which inward-bound vessels are not to proceed until manifest delivered.
Delivery of manifest when vessel anchors below place so fixed.
54. Delivery of manifest where no place has been so fixed.
55. Signature and contents of manifest.
Amendment of errors in manifest.
56. Duty of person receiving manifest.
57. Bulk not to be broken until manifest, etc., delivered, and vessel entered inwards.
58. Master, if required, to deliver bill of lading, etc., to Customs-collector, and answer questions.
59. Special pass for breaking bulk.
60. Manifest, etc., may be delivered by ship's agent.
Entry outwards, Port-clearance and Departure of Vessels.
61. Order for entry outwards to be obtained before export cargo is shipped.
62. No vessel to depart without port-clearance.
No pilot to take charge of vessel proceeding to sea without production of port-clearance.
63. Application for port-clearance.
Master on applying for port-clearance to deliver documents and answer questions.

SECTIONS.

64. Power to refuse port-clearance.

65. Grant of port-clearance.

66. Grant of port-clearance on security of ship's agent.

CHAPTER VIII.

GENERAL PROVISIONS AFFECTING VESSELS IN PORT.

67. Power to depute Customs-officer to board ships.

Duty of such officer.

68. Officer and servant to be received.

Accommodation of officer and servant.

69. Officers of Customs to have free access to every part of ship, and may seal and secure goods.

Power to authorize search and opening of locks.

70. Goods not to be shipped, discharged or water-borne except in presence of officer.

71. Period allowed for discharge and shipment of cargo.

Consequence of exceeding same.

Allowance for period during which vessel is laid up.

72. Goods not to be landed, etc., on Sundays or holidays, without permission, nor except within fixed hours.

73. Goods not to be shipped, etc., except at wharves.

74. Power to exempt from sections 70 and 73.

75. Power to make rules regarding baggage and mails.

Landing-fees.

76. Boat-note.

77. Goods water-borne to be forthwith landed or shipped.

78. Such goods not to be transhipped without permission.

79. Power to prohibit plying of unlicensed cargo-boats.

Issue of licenses and registration of cargo-boats.

80. Power to require goods to be weighed or measured on board before landing or after shipment.

CHAPTER IX.

OF DISCHARGE OF CARGO AND ENTRY INWARDS OF GOODS.

81. Discharge of cargo may commence on receipt of due permission.

82. Goods not to leave ship unless entered in manifest.

SECTIONS.

83. Procedure in respect of goods not landed within time allowed.

84. Power to land small parcels.

Notice regarding unclaimed packages.

85. Power to permit immediate discharge.

86. Entry for home consumption or warehousing.

87. Assessment of dutiable goods.

88. Procedure in case of goods not cleared or warehoused within four months after entry of vessel.

Power to direct sale of perishable goods.

Proviso.

CHAPTER X.

OF CLEARANCE OF GOODS FOR HOME CONSUMPTION.

89. Clearance for home consumption.

CHAPTER XI.

WAREHOUSING.

Of the Admission of Goods into a Warehouse.

90. Application to warehouse.

91. Form of application.

92. Warehousing bond.

Form of bond.

93. Forwarding of goods to warehouse.

94. Receipt of goods at warehouse.

95. Goods how warehoused.

96. Warrant to be given when goods are warehoused.

Form of warrant.

Rules relating to Goods in a Warehouse.

97. Access of Customs-officer to private warehouse.

98. Power to cause packages lodged in warehouse to be opened and examined.

99. Access of owners to warehoused goods.

100. Owner's power to deal with warehoused goods.

101. Payment of rent and warehouse-dues.

102. Goods not to be taken out of warehouse, except as provided by this Act.

SECTIONS.

103. Period for which goods may remain warehoused under bond.
Goods in private warehouse on cancellation of license.

Of the removal of Goods from one Warehouse to another.

104. Power to remove goods from one warehouse to another in same port.
105. Power to remove goods from one port to another.
Procedure.
106. Transmission of account of goods to officers at port of destination.
Bond for due arrival and re-warehousing.
107. Remover may enter into a general bond.
108. Goods on arrival at port of destination to be subject to same laws as goods on first importation.
109. Bond under section 92 to continue in force notwithstanding removal.

Clearance for Home Consumption or Shipment.

110. Clearance of bonded goods for home consumption.
111. Clearance of same for shipment to foreign port.
112. Clearance of same for shipment as provisions, etc., on vessel proceeding to foreign ports.
113. Form of application for clearance of goods.
Application when to be made.
114. Re-assessment of warehoused goods when damaged.
115. Re-assessment on alteration of duty or tariff-valuation.
116. Allowance in case of wine, spirit, beer or salt.
117. Further special allowance.

Of the Forfeiture and Discharge of the Bond.

118. If goods are improperly removed from warehouses or allowed to remain beyond time fixed,
or lost or destroyed,
or taken as samples,
Collector may demand duty, etc.
119. Procedure on failure to pay duty, etc.
120. Noting removal of goods.
121. Register of bonds.
Cancellation and return of bonds.

SECTIONS.

Miscellaneous.

122. Power to remit duties on warehoused goods lost or destroyed.
123. Responsibility of warehouse-keeper.
Compensation for loss or injury.
124. Public warehouse to be locked.
125. Power to decide where goods may be deposited in public ware house, and on what terms.
126. Expenses of carriage, packing, etc., to be borne by owners
127. Bengal Bonded Warehouse Association.

CHAPTER XII.

TRANSHIPMENT.

128. Power to permit transhipment without payment of duty.
129. Superintendence of transhipment.
130. Subsidiary rules as to transhipment.
131. Entry and warehousing, on arrival, of goods transhipped under section 128, clause 2.
132. Transhipment of provisions and stores from one vessel to another of same owner without payment of duty.
133. Levy of transhipment-fee.
134. Power to prohibit transhipment.
135. No goods to be transhipped except as provided.

CHAPTER XIII.

EXPORTATION OR SHIPMENT AND RE-LANDING.

136. No goods to be shipped, etc., till entry outwards of vessel.
137. Clearance for shipment.
138. Bond required in certain cases before exportation.
139. Additional charge on goods cleared for shipment after port-clearance granted.
140. Notice of non-shipment or re-landing, and return of duty thereon.
141. Goods re-landed or transhipped from a vessel returning to port, or putting into another port.
142. Vessel returning to port may enter and land goods under import-rules.
143. Landing of cargo during repairs.

CHAPTER XIV.

SPIRIT.

Exportation of Spirit under Bond for Excise-duty.

SECTIONS.

144. Rules for removal of spirit from distillery without payment of duty for exportation.

145. Spirit for export to be taken direct from distillery to Custom-house under pass.

146. Gauging and proving of spirit.

147. Duty to be recovered on any deficiency in spirit under bond.

148. Duty on spirit exported under bond from one Indian port to another.

149. Removal for local consumption of spirit intended for exportation.

Drawback of Excise-duty on Export of Spirit.

150. Drawback of excise-duty on spirit exported.

Miscellaneous.

151. Differential duty to be levied in certain cases.

152. Rum-shrub, etc., how charged with duty.

Provisions respecting spirit applied to such liquors.

153. Conditions of drawback and remission of duty on spirit.

154. Re-land of spirit shipped.

155. Power to make rules for ascertaining that imported spirit has been rendered unfit for human consumption.

Decision where no rules, or their applicability disputed.

CHAPTER XV.

COASTING-TRADE.

156. Chapters VII, IX, X and part of XIII inapplicable to coasting trade.

157. Power to regulate coasting-trade.

158. Coasting-vessels to deliver manifest and obtain port-clearance before leaving port of lading.

159. Delivery of manifest, etc., on arrival.

160. Departure from intermediate port.

161. Power to require bond before port-clearance is granted.

162. Discharge of cargo.

163. Goods on coasting-vessel, if excisable, not to be unladen without permission.

SECTIONS.

164. Grant and revocation of general pass.

165. Rules respecting cargo-books to be kept by masters of coasting-vessels.

166. Power to board and examine coasting-vessels.

CHAPTER XVI.

OFFENCES AND PENALTIES.

167. Punishments for offences:—

1. For infringing rules made under Act.
2. For landing or shipping goods at unauthorized port, etc.
3. For shipping, landing, concealing, etc., contrary to Act.

   For being on board vessel on which offence is committed under No. 4.

4 For vessel which has been in port with a cargo afterwards being found in ballast and cargo unaccounted for.

5. For masters of tug-steamers or pilot-vessels receiving or discharging any goods without due authority from sea-going vessel.
6. For not bringing-to at boarding-station.
7. For vessel removing from place of mooring or unlading, without due authority.

   For vessel not being moored in accordance with directions under section 17.

8. For goods being imported or exported contrary to prohibition.
9. For unauthorized declaration as to value of goods.
10. For not exporting or re-landing drawback goods.
11. For unauthorized lading or unlading of wine, spirit, etc.
12. For entering goods for drawback, which are less in value than the amount of drawback claimed.

13 For proceeding inward beyond fixed place before delivery of manifest.

14. For wilfully omitting to deliver manifest when vessel anchors below reporting station.

SECTIONS.

167. Punishments for offences—*continued.*

15. For like omission when reporting station has not been fixed.
16. For master delivering unsigned or untrue manifest.
17. For not being able to account for missing goods or deficiency of goods.
18. For refusing to receive or countersign manifest.
19. For breaking bulk without permission.
20. For false entry or fraudulent alteration in bill of lading.
    For not making bill before leaving place where goods shipped.
    For cargo being stored, destroyed or thrown overboard and not satisfactorily accounted for.
21. For attempting to depart without port-clearance.
22. For departing without port-clearance.
23. For pilot taking charge of vessel without port-clearance.
24. For refusing to receive officer of Customs on board.
25. For disobeying section 68.
26. For masters resisting search, removing marks, etc., placed by Customs-officer, secretly conveying away goods or opening hatchway after fastened by Customs-officer.
27. For lading in absence of Customs-officer.
28. For removing goods contrary to section 70, 72 or 75.
29. For sending goods without, or in excess of, boat-note.
30. For non-receipt or non-delivery or non-signing of boat-note.
31. For not landing or shipping goods in accordance with section 73, 77 or 78.
32. For goods being found in unlicensed cargo-boats.
33. For discharging goods not duly entered in manifest.
34. For goods being found concealed and unaccounted for.
35. For goods found not agreeing in description and quantity with entry in manifest.
36. For removing goods after landing and before due entry.

SECTIONS.

167. Punishments for offences—*continued.*

37. For goods being brought to be passed through Custom-house when packages differ from description given, contents are misdescribed or mis-stated, or other goods are concealed amongst them.
38. For misdescription of goods.
39. For taking or passing goods without entry.
40. Prohibited or dutiable goods concealed in baggage.
41. For improper carrying into warehouse.
42. For withholding or removing, before examination, goods entered to be warehoused.
43. For warehousing goods improperly.
44. For refusing to open private warehouse when duly required.
45. For neglecting to stow goods properly in warehouse.
46. For importer or owner of warehoused goods clandestinely gaining access.
47. For opening or altering warehoused goods.
48. For deficiencies in contravention of section 98 or 100 of goods in a private warehouse.
49. For failing to produce goods when required.
50. For concealing, removing, abstracting or transferring from one package to another goods duly warehoused.
51. For excess, in private warehouse, over registered quantity.
52. For removing warehoused goods improperly.
53. For taking goods out of warehouse without paying duty.
54. For infringing rules or orders regarding transhipment.
55. For shipping goods before entry outwards.
56. For shipping goods not in shipping-bill.
57. For not giving notice of short shipping or re-landing as required by section 140.
58. For landing at place other than that for which goods have been cleared.
59. For deficiency in goods on which drawback has been paid, on board vessel referred to in section 142.

SECTIONS.

167. Punishments for offences—*concluded.*

60. For irregularly re-landing spirituous liquors.
61. For contravening rules relating to spirit.
62. For contravention of rules made under section 157.
63. For, contrary to such rules, touching at foreign port or not declaring in writing that vessel touched at foreign port.
64. For non-compliance with section 158, 159 or 160.
65. For failure to produce certificate.
66. For master of coasting-vessel violating any conditions of general pass.
67. For contravention of the provisions of section 165.
68. For dutiable goods entered in cargo-boat not being found, or for not entering.
69. For failure to keep cargo-book correctly, etc.
70. For breach in respect of lading, carrying coastwise and unlading.
71. For refusal to produce documents.
72. For making false declaration, destroying or refusing to produce document, or refusing to answer questions.
73. For possession of smuggled goods.
74. For searching persons on insufficient grounds.
75. For Customs-officers guilty of breach of duty.
76. For Customs-officers committing or conniving at frauds against Customs-revenue.
77. For neglect of Police-officer to give notice.
78. For obstruction to Customs-officers.
79. For Customs-officer disclosing particulars learnt officially concerning goods, or showing or parting with samples.
80. For acting as agent without authority.

168. Packages and contents included in confiscation of goods.
Also conveyances and animals used in removal.
Tackle, etc., included in confiscation of vessels.

CHAPTER XVII.

PROCEDURE RELATING TO OFFENCES, APPEALS, ETC.

SECTIONS.

169. Power to search on reasonable suspicion.
170. Persons may, before search, require to be taken before Magistrate or Customs-collector.
171. Power to stop vessels, carts, etc., and search for goods on reasonable suspicion.
172. Power to issue search-warrants.
173. Persons reasonably suspected may be arrested.
174. Persons arrested to be taken to nearest Magistrate or Customs-collector.
175. Persons taken before Magistrate may be detained or admitted to bail.
176. Person escaping may be afterwards arrested.
177. Persons in Her Majesty's Navy, or the Indian Navy, when arrested, to be secured on board until warrant procured.
178. Seizure of things liable to confiscation.
179. Things seized how dealt with.
180. Procedure in respect of things seized on suspicion.
181. When seizure or arrest is made, reason in writing to be given.
181A. Power to detain packages containing certain publications imported into the States.
181B. Procedure for disposal by High Court of applications for release of packages so detained.
181C. Jurisdiction barred.
182. Adjudication of confiscations and penalties.
183. Option to pay fine in lieu of confiscation.
184. On confiscation, property to vest in Government.
185. Levy of penalty for failure to bring-to.
186. Penalty under Act not to interfere with punishment under other law.
187. Offences not specially provided for how tried.
188. Appeal from subordinate to Chief Customs-authority.
189. Deposit, pending appeal, of duty demanded.
190. Power to remit penalty or confiscation.

SECTIONS.

191. Revision by the Central Government.
192. Goods on which penalty incurred not to be removed till payment.
Other goods of person liable to fine or penalty may be detained.
193. Enforcement of payment of penalty.

CHAPTER XVIII.

MISCELLANEOUS.

194. Power to open packages and examine goods.
195. Power to take samples of goods.
195A. Power to make rules for determining whether mineral oil is suitable for use as an illuminant.
196. Owner to pay expense incidental to compliance with Customs law.
197. No compensation for loss or injury except on proof of neglect or wilful act.
198. Notice of proceedings.
Limitation.
199. Wharfage fees.
200. Duplicates of documents may be granted on payment of fee.
201. Amendment of documents.
202. Custom-house agents.
203. Agent to produce authority if required.
204. Rules to be notified.
205. Publication of notifications in Official Gazettes.
206. Remission of duty and compensation to owner in certain cases.
207. Saving of Calcutta Port Commissioners' and Bombay Port Trust Acts.

SCHEDULE.

PART I.—[*Repealed.*]

PART II.—FORMS—

A—Form of Bond for Import-duty.

B.—Form of Bonded Warehouse Warrant.

C.—Form of Bond for the Removal of Spirit from a Licensed Distillery.

(*Chapter I.—Preliminary.*)

ACT No. VIII of 1878.[1]

[*8th March*, 1878.]

An Act to consolidate and amend the law relating to the levy of Sea Customs-duties.

Preamble.

WHEREAS it is expedient to consolidate and amend the law relating to the levy of Sea Customs-duties; It is enacted as follows:—

CHAPTER I.

PRELIMINARY.

Short title

1. This Act may be called the Sea Customs Act, 1878.

Local extent. Commencement.

It extends to [2][the whole of India ~~except Part~~ B States], and shall come into force on the first day of April 1878.

2. [*Repeal of Enactments. References to enactments repealed. Saving of appointments, etc.*] *Rep. by the Repealing Act, 1938 (I of 1938), s. 2 and Sch.*

Interpretation.

3. In this Act, unless there be something repugnant in the subject or context,—

"Chief Customs-authority."

[3][(*a*) "Chief Customs-authority" means the Central Board of Revenue constituted under the Central Board of Revenue Act, 1924, and includes, in relation to any power or duty which the [4][Central Government] may, by notification in the [5][Official Gazette], transfer from the Central Board of Revenue [6][and entrust to a [7][State Government or to an officer of a State Government under [8][article 258 (1) of the constitution] such Government or officer, as the case may be]:] IV of 1924.

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[1] For Statement of Objects and Reasons, *see* Gazette of India, 1876, Pt. V, p. 1402; for the Report of the Select Committee, *see ibid.*, 1877, Pt. V, p. 491; for discussions in Council, *see ibid.*, 1876, Supplement p. 1289; *ibid.*, 1877, Supplement, p. 2770; *ibid.*, 1878, Supplement, p. 448.

The Inland Bonded Warehouses Act, 1896 (8 of 1896), is to be read with and taken as part of this Act—*see* s. 1 (2) of the former Act.

This Act has been extended to Berar by the Berar Laws Act, 1941 (4 of 1941).

Ss. 144 to 154 have been declared to be in force in the Khondmals District by the Khondmals Laws Regulation, 1936 (4 of 1936), s. 3 and Sch.; and in the Angul District by the Angul Laws Regulation, 1936 (5 of 1936), s. 3 and Sch.

[2] Subs. by the A. O. 1950 for "all the Provinces of India" which had been subs. by the A. O. 1948 for "the whole of British India".

[3] Subs. by the Central Board of Revenue Act, 1924 (4 of 1924), s. 4 and Sch. for the original definition.

[4] Subs. by the A. O. 1937 for "G. G. in C.".

[5] Subs. by the A. O. 1937 for "Gazette of India".

[6] Subs. by the A. O. 1937 for "to a L. G., the L. G. or such officer as the L. G. may appoint in that behalf".

[7] Subs. by the A. O. 1950 for "Provincial".

[8] Subs. by the A. O. 1950 for "section 124 (*1*) of the Government of India Act, 1935".

(*b*) "Chief Customs-officer" denotes the Chief Executive Officer of Sea-customs for any port to which this Act applies: "Chief Customs-officer."

(*c*) "customs-collector" includes every officer of Customs for the time being in separate charge of a custom-house, or duly authorized to perform all, or any special, duties of an officer so in charge: "Customs-collector."

(*d*) "customs-port" means any place [1]* * * declared under section 11 to be a port for the shipment and landing of goods: "Customs-port."

(*e*) "~~foreign~~ port" means [2]* * * any place beyond the limits of [3]~~[States.]~~[4]: "Foreign port."

(*f*) [5]"vessel" includes anything made for the conveyance by water of human beings or property: "Vessel."

(*g*) "coasting vessel" denotes any vessel proceeding from one customs-port to another customs-port, whether touching at any intermediate foreign port or not, or proceeding from or to a customs-port to or from a place declared to be a port under section 12: "Coasting vessel."

(*h*) [6]"master," when used in relation to any vessel, means any person, except a pilot or harbour-master, having command or charge of such vessel: "Master."

(*i*) "warehousing port" means any customs-port declared under section 14 to be a warehousing port: "Warehousing port."

(*j*) "warehouse" denotes any place appointed or licensed under section 15 or section 16. "Warehouse."

[7]* * * *

[8]~~[(*k*) 'States' denotes all territories for the time being comprised within Part A States and Part C States.]~~

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[1] The words "except Aden" rep. by the A. O. 1937.

[2] The words "Aden and" rep. by the A. O. 1937.

[3] Subs. by the A O. 1950 for "the Provinces of India" which had been subs. by the A. O. 1948 for "British India".

[4] For order declaring ports in Cochin and Travancore to be British Indian ports for the purposes of the levy of customs-duties and the payment of drawback, *see* Gazette of India, 1865, p. 780, and Gen. R. and O., Vol. II, p. 68.

For order declaring ports in the territories of His Highness the Gaekwar, the Thakur of Bhawnagar and the Nawab of Cambay to be British Indian ports for the purposes of this Act, *see* Gazette of India, 1866, p. 908, and Gen. R. and O., Vol. II, p. 68.

[5] *Cf.* definition in the General Clauses Act, 1897 (10 of 1897), s. 3 (*56*).

[6] *Cf.* definition in s. 3 (*32*), *ibid.*

[7] *Cl.* (*k*), defining "official Gazette," ins. by the Central Board of Revenue Act, 1924 (4 of 1924), s. 4 and Sch., rep. by the A. O. 1937. *See* now definition in the General Clauses Act, 1897 (10 of 1897), s. 3 (*39*).

[8] Ins. by the A. O. 1950.

Agent of owner of goods to be deemed owner for certain purposes.

4. When any person is expressly or impliedly authorized by the owner of any goods to be his agent in respect of such goods for all or any of the purposes of this Act, and such authorization is approved by the Customs-collector, such person shall, for such purposes, be deemed to be the owner of such goods.

When ship's agent may act for master.

5. Anything which a master is required or empowered to do under this Act may, with the express or implied consent of such master and the approval of the Customs-collector, be done by a ship's agent.

CHAPTER II.

APPOINTMENT AND POWERS OF OFFICERS, ETC.

Appointment of Customs officers.

[1][**6.** The [2][Central Government] may appoint such persons as [3][it] thinks fit to be officers of Customs, and to exercise the powers conferred, and perform the duties imposed, by this Act on such officers.]

[4]**7.** [*Delegation of powers under section 6.*] *Rep. by the A. O.* 1937.

Performance of duties of Customs-collector, where no custom-house.

8. At any place for which there is no custom-house, the Collector of the district and the officers subordinate to him shall, unless the [5][Central Government] otherwise directs, perform all duties imposed by this Act on a Customs-collector and other officers of Customs.

Power to make rules

9. The Chief Customs-authority may from time to time [6] * * make rules[7] consistent with this Act—

(*a*) prescribing and limiting the powers and duties of officers of Customs;

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[1] Subs. by the Central Board of Revenue Act, 1924 (4 of 1924), s. 4 and Sch., for the original s. 6.

[2] Subs. by the A. O. 1937 for "G. G. in C."

[3] Subs. by the A. O. 1937 for "he".

[4] Section 7, as substituted by the Central Board of Revenue Act, 1924 (4 of 1924), s. 4 and Sch. for the original section, read as follows:—

"The G. G. in C. may delegate to any L. G. or to the Chief Customs-authority any power conferred upon him by s. 6, and the L. G. or the Chief Customs-authority may delegate to any officer of Customs any power so delegated to it." It was rep. by the A. O. 1937 in view of ss. 124 (*1*) and 241 (*1*) (*a*) of the G. of I. Act, 1935 (26 Geo. 5, *c.* 2), which provide for such delegation. *Cf.* also the General Clauses Act, 1897 (10 of 1897), s. 4A (*2*).

[5] Subs. by the A. O. 1937 for "L. G."

[6] The words "with the sanction of the L. G." rep. by the Decentralization Act, 1914 (4 of 1914), s. 2 and Sch., Pt. I.

[7] For rules made under s. 9, *see* Gen. R. & O., supplementary Vol. VI, pp.3-26.

(Chapter II.—Appointment and Powers of officers, etc. Chapter III.—Appointment of Ports, Wharves, Custom-houses, Warehouses, and Boarding and Landing Stations.)

(*b*) regulating the delegation of their duties by such officers; and

(*c*) generally to carry out the provisions of this Act.

10. No Chief Customs-authority or Chief Customs-officer, and no other officer of Customs whom such Chief authority or Chief officer deems it necessary to exempt on grounds of public duty, shall be compelled to serve on any jury or inquest, or as an assessor.

Customs-officers exempted from service on jury or inquest or as assessors.

CHAPTER III.

APPOINTMENT OF PORTS, WHARVES, CUSTOM-HOUSES, WAREHOUSES, AND BOARDING AND LANDING STATIONS.

11. [1][The Chief Customs-authority] may from time to time, by notification [2]* * * * * in the Official Gazette,—

Power to appoint ports, wharves and custom-houses.

(*a*) declare the places [3]* * * * * which alone shall be ports for the shipment and landing of goods;

(*b*) declare the limits of such ports;

(*c*) appoint proper places therein to be wharves for the landing and shipping of goods, or of particular classes of goods;

(*d*) declare the limits of any such wharf;

(*e*) alter the name of any such port or wharf; and

(*f*) declare what shall, for the purposes of this Act, be deemed to be a custom-house, and the limits thereof.

12. [1][The Chief Customs-authority] may also from time to time in like manner declare places to be ports for the carrying on of coasting trade with customs-ports, or with any specified customs-port, and for no other purpose.

Power to declare places to be ports for coasting trade.

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[1] Subs. by the Central Board of Revenue Act, 1924 (4 of 1924), s. 4 and Sch. for "The L. G., or if so authorized by the L. G., the Chief Customs-authority".

[2] For notifications under s. 11, *see* Gen. R. & O., Vol. II, pp. 43, 50-60; *ibid.*, Supplementary Vol. I, pp. 219-285; *ibid.*, Supplementary Vol. VI, pp. 26-33.

[3] The words "within the territories administered by it" rep. by Act 4 of 1924, s. 4 and Sch.

(Chapter III.—Appointment of Ports, Wharves, Custom-houses, Warehouses, and Boarding and Landing Stations.)

Power to declare that foreign ports shall be regarded as customs-ports for certain purposes.

13. The [1][Central Government] may from time to time direct,[2] by notification in the [3][Official Gazette], that all goods or any specified class of goods imported from or exported to any foreign port to or from a customs-port shall, with such limitations and on such conditions (if any) as [4][it] thinks fit, be treated for any of the purposes of this Act as goods imported from or exported to a customs-port, as the case may be.

Power to declare warehousing ports.

14. [5][The Chief Customs-authority] may from time to time declare,[2] by notification in the Official Gazette, that any customs-port shall be a warehousing port for the purposes of this Act.

Power to appoint public warehouses.

15. At any warehousing port[6], the [7][Chief Customs-officer] may, from time to time, appoint public warehouses wherein dutiable goods may be deposited without payment of duty on the first importation thereof, and may cancel such appointment.

Power to license private warehouses.

16. At any warehousing port[6] the Chief Customs-officer may from time to time license private warehouses[8] wherein dutiable goods may be deposited as aforesaid.

Form of application for license.

Every application for a license for a private warehouse shall be in writing, and shall be drawn up in such form as is from time to time prescribed by the [7][Chief Customs-officer] and shall be signed by the applicant.

Revocation of license.

Every license granted under this section may be cancelled on conviction of the licensee of any offence under this Act relating to warehouses, unless it is otherwise provided in the license, or on the expiration of one month's notice in writing given to the licensee by the Chief Customs-officer.

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[1] Subs. by the A. O. 1937 for "G. G. in C.".

[2] For notifications under ss. 13 and 14, *see* Gen. R. & O., Supplementary Vol. I, pp. 286-288; *ibid.*, Supplementary Vol. VI, p. 34.

[3] Subs. by the A. O. 1937 for "Gazette of India".

[4] Subs. by the A. O. 1937 for "he".

[5] Subs. by the Central Board of Revenue Act, 1924 (4 of 1924), s. 4 and Sch., for "The L. G., or if so authorized by the L. G., the Chief Customs-authority".

[6] As to power of Chief Customs-authority to appoint a public or license a private warehouse at places other than warehousing ports, *see* the Inland Bonded Warehouses Act, 1896 (8 of 1896), s. 4 (*1*).

[7] Subs. by the Decentralization Act, 1914 (4 of 1914), s. 2 and Sch., Pt. I, for "Chief Customs-authority".

[8] No arms, ammunition or military stores may be deposited in any warehouse licensed under s. 16 without the sanction of the Central Government, *see* the Indian Arms Act, 1878 (11 of 1878), s. 7.

(Chapter III.—Appointment of Ports, Wharves, Custom-houses, Warehouses, and Boarding and Landing Stations. Chapter IV.—Prohibitions and Restrictions of Importation and Exportation.)

Stations for Customs-officers to board and land.

17. The [1][Chief Customs-officer] may from time to time appoint, in or near any cumstoms-port, stations or limits at or within which vessels arriving at or departing from such port shall bring-to for the boarding or landing of officers of Customs, and may, unless separate provision therefor has been made under the Indian Ports Act, 1875,[2] direct at what particular place in any such port vessels, not brought into port by pilots, shall anchor or moor.

XII of 1875.

CHAPTER IV.

PROHIBITIONS AND RESTRICTIONS OF IMPORTATION AND EXPORTATION.

Prohibitions.

18. No goods specified in the following clauses shall be brought, whether by land or sea, into[3] [~~States~~]:— 6. 80.

[5]* * * * *

(*b*) counterfeit coin: or coin which purports to be [6][Indian coin], or to be coin made under the Native Coinage Act, 1876, but which is not of the established standard in weight or fineness:

XX of 1876.

(*c*) any obscene book, pamphlet, paper, drawing, painting, representation, figure or article:

[7][(*d*) goods having applied thereto a counterfeit trade-mark within the meaning of the Indian Penal Code, or a false trade-description within the meaning of the Indian Merchandise Marks Act, 1889:

XLV of 1860.

IV of 1889.

(*e*) goods made or produced beyond the limits of [8][~~States~~], and having applied thereto any name or trade-mark being, or purporting to be, [9] * * * * * the name or trade- 6-80

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[1] Subs. by the Decentralization Act, 1914 (4 of 1914), s. 2 and Sch., Pt. I, for "Chief Customs-authority".

[2] *See* now the Indian Ports Act, 1908 (15 of 1908).

[3] *See* footnote 3 on p. 403, *supra*.

[4] *See* footnote 4 on p. 403, *supra*.

[5] Cl. (*a*) rep. by the Indian Copyright Act, 1914 (3 of 1914).

[6] Subs. by the A. O. 1950 for "Queen's coin of India".

[7] Cls. (*d*) and (*e*) subs. by the Indian Merchandise Marks Act, 1889 (4 of 1889), s. 10 (*1*), for the original cl. (*d*).

[8] Subs. by the A. O. 1950 for "the Provinces of India". These words were subs. by the A. O. 1948 for "British India" which had been subs. by the Indian Merchandise Marks (Amendment) Act, 1941 (2 of 1941), s. 10, for "the United Kingdom, British India and British Burma". The last five words had been subs. by the A. O. 1937 for "and British India".

[9] The words "or being a colourable imitation of" rep. by the Sea Customs (Amendment) Act, 1904 (16 of 1904).

(Chapter IV.—Prohibitions and Restrictions of Importation and Exportation.)

mark of any person who is a manufacturer, dealer or trader in [1]~~[States]~~ unless—

(*i*) the name or trade-mark is, as to every application thereof, accompanied by a definite indication of the goods having been made or produced in a place beyond the limits of [2]~~[States]~~, and

(*ii*) [3][the country in which that place is situated is] in that indication indicated in letters as large and conspicuous as any letter in the name or trade-mark, and [4][in the English language] :]

[5]~~[(*h*)~~ piece-goods, such as are ordinarily sold by length or by the piece, which—

(*i*) have not conspicuously stamped in English numerals on each piece the length thereof in standard yards, or in standard yards and a fraction of such a yard, according to the real length of the piece, and

[6][(*ii*) have not been conspicuously marked on each piece with the name of the manufacturer, exporter or wholesale purchaser in India of the piece, and]

[7][(*iii*)] have been manufactured beyond the limits of India, or,

[8][(*iv*) have been manufactured in [9][a Part B State] in premises which, if situate in a [10]~~[State]~~, would be a factory as defined in the Factories Act, 1934] :] XXV of 1934.

[11][(*ff*) goods made or produced beyond the limits of [12]~~[States]~~ and intended for sale, and having applied thereto, a design in which copyright exists under the Indian Patents and Designs Act, 1911, II of 1911. in respect of the class to which the goods belong or any fraudulent or obvious imitation of such design except when the application

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[1] Subs. by the A. O. 1950 for "the Provinces of India". These words were subs. by the A. O. 1948 for "British India" which had been subs. by the Indian Merchandise Marks (Amendment) Act, 1941 (2 of 1941), s. 10, for "the United Kingdom or in British India or in British Burma". The last four words had been ins. by the A. O. 1937.

[2] Subs. by the A. O. 1950 for "the Provinces of India". These words were subs. by the A. O. 1948 for "British India" which had been subs. by Act 2 of 1941, s. 10, for "the United Kingdom, British India and British Burma". The last five words had been subs. by the A. O. 1937 for "and British India".

[3] Subs. by the Indian Merchandise Marks and Sea Customs Acts Amendment Act, 1891 (9 of 1891), s. 3, for "that place and the country in which it is situated are".

[4] Subs. by Act 2 of 1941, s. 10, for "in the same language and character as the name or trade-mark".

[5] Cl. (*f*) ins. by the Indian Merchandise Marks Act, 1889 (4 of 1889), s. 10 (2).

[6] Sub-clause (*ii*) ins. by Act 2 of 1941, s. 10.

[7] The original sub-clause (*ii*) renumbered (*iii*), s. 10, *ibid.*

[8] Subs. by the A. O. 1948 for the original sub-clause (*iii*), renumbered (*iv*) and amended by Act 2 of 1941, s. 10.

[9] Subs. by the A. O. 1950 for "an Acceding State".

[10] Subs. by the A. O. 1950 for "Province".

[11] Cl. (*ff*) ins. by the Indian Patents and Designs (Amendment) Act, 1939 (12 of 1939), s. 21.

[12] Subs. by the A. O. 1950 for "the Provinces of India" which had been subs. by the A. O. 1948 for "British India".

of such design has been made with the license or written consent of the registered proprietor of the design]:

[1][(*g*) matches made with white phosphorous]:

IV of 1889. [2][(*h*) goods which are required by a notification under section 12A of the Indian Merchandise Marks Act, 1889, to have applied to them an indication of the country or place in which they were made or produced, unless such goods show such indication applied in the manner specified in the notification:

(*i*) cotton yarn such as is ordinarily imported in bundles, if—

(*i*) the bundle containing such yarn has not been conspicuously marked with the name of the manufacturer, exporter or wholesale purchaser in India of the goods, or

(*ii*) such bundle has not been conspicuously marked with an indication of the weight and the count of the yarn contained in it, in accordance with the rules made under section 20 of the Indian Merchandise Marks Act, 1889, and

IV of 1889. (*iii*) the yarn has been manufactured beyond the limits of India, or

[3][(*iv*) has been manufactured in [4][a Part B State] in premises which, if situate in a [5][~~State~~], would be a factory as defined in the Factories Act, 1934]:

XXV of 1934. (*j*) [6][Cotton sewing, darning, crochet or handicraft thread], if—

(*i*) the units in which the thread is supplied have not been conspicuously marked with the name of the manufacturer, exporter or wholesale purchaser in India of the goods, or

(*ii*) if each unit has not been conspicuously marked with [7][the length or weight] of thread contained in it and [8][in such other manner as is required by] the rules made under section 20 of the Indian Merchandise Marks Act, 1889, and

IV of 1889. (*iii*) the thread has been manufactured beyond the limits of India, or

[9][(*iv*) has been manufactured in [4][a Part B State] in premises which, if situate in a [5][~~State~~], would be premises not exempted from the operation of sub-section 2 of section 12 of the Indian Merchandise Marks Act, 1889]].

IV of 1889.

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[1] Cl. (*g*) ins. by the White Phosphorous Matches Prihibition Act, 1913 (5 of 1913), s. 3.

[2] Cls. (*h*), (*i*) and (*j*) were ins. by the Indian Merchandise Marks (Amendment) Act, 1941 (2 of 1941), s. 10.

[3] Subs. by the A. O. 1948 for the original sub-clause (*iv*).

[4] Subs. by the A. O. 1950 for "an Acceding State".

[5] Subs. by the A. O. 1950 for "Province".

[6] Subs. by the Indian Merchandise Marks (Amendment) Supplementary Act, 1945 (5 of 1945), s. 4, for "cotton sewing or darning thread".

[7] Subs. by s. 4, *ibid.*, for "an indication of the weight."

[8] Subs. by s. 4, *ibid.*, for "the grist number in accordance with"

[9] Subs. by the A. O. 1948 for the original sub-clause as amended by Act 5 of 1945, s. 4.

(Chapter IV.—Prohibitions and Restrictions of Importation and Exportation.)

Power to prohibit or restrict importation or exportation of goods.

19. The [1][Central Government] may from time to time, by notification in the [2][Official Gazette], [3]prohibit or restrict the bringing or taking by sea or by land goods of any specified description into or out of [4][the States] [5][across any customs frontier as defined by the Central Government].

Detention and confiscation of goods whose importation is prohibited.

[6][**19A.** (*1*) Before detaining any such goods as are or may be specified in or under section 18 or section 19, as the case may be, or taking any further proceedings with a view to the confiscation thereof under this Act, the Chief Customs-officer or other officer appointed by the [7][Chief Customs-authority] in this behalf may require the regulations under this section, whether as to information, security, conditions or other matters, to be complied with, and may satisfy himself in accordance with those regulations that the goods are such as are prohibited to be imported.

(*2*) The [8][Central Government] may make regulations[9], either general or special, respecting the detention and confiscation of goods the importation of which is prohibited, and the conditions, if any, to be fulfilled before such detention and confiscation, and may by such regulations determine the information, notices and security to be given, and the evidence requisite for any of the purposes of this section and the mode of verification of such evidence.

(*3*) Where there is on any goods a name which is identical with, or a colourable imitation of, the name of a place in the United Kingdom, [10][[11][India] or [12][Burma]], that name, unless accompanied in equally large and conspicuous letters, [13][in the English language], by the name of the country in which such place is situate, shall be treated for the purposes of sections 18 and 19 as if it were the name of a place in the United Kingdom, [10][[11][India] or [12][Burma]].

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[1] Subs. by the A. O. 1937 for "G. C. in C.".

[2] Subs. by the A. O. 1937 for "Gazette of India".

[3] For notifications under s. 19. *see* Gen. R. & O., Vol. II, pp. 70-124; *ibid.*, Supplementary Vol. I, pp. 301-311; *ibid.*, Supplementary Vol. VI, pp. 35-42; and *ibid.*, 1943-1945 Vol.; pp. 201-203.

[4] Subs. by the A. O. 1950 for "the Provinces" which had been subs. by the A. O. 1948 for "British India".

[5] Subs. by the A. O. 1937 for "or any specified part thereof, either generally or from or to any specified country, region, port or place beyond the limits of British India" which had been subs. for the original words by s. 2 of the Sea Customs (Amendment) Act, 1914 (12 of 1914). For notification defining the customs frontier, *see* Gen. R. & O., supplementary Vol. V, p. 259.

[6] Ins. by the Indian Merchandise Marks Act, 1889 (4 of 1889), s. 11.

[7] Subs. by the Decentralization Act, 1914 (4 of 1914), s. 2 and Sch., Pt. I, for "L. G.".

[8] Subs. by the A. O. 1937 for "G. G. in C."

[9] For notifications under s. 19A, *see* Gen. R. and O., Vol. II, pp. 126-128; and *ibid.*, Supplementary Vol. I, pp. 311-313.

[10] Subs. by the A. O. 1937 for "or British India".

[11] Subs. by the Indian Merchandise Marks (Amendment) Act, 1941 (2 of 1941), s. 11, for "British India".

[12] Subs. by the Repealing and Amending Act, 1949 (40 of 1949), s. 3 and Sch. II for "British Burma".

[13] Subs. by s. 11 *ibid.*, for "and in the same language and character".

(Chapter IV.—Prohibitions and Restrictions of Importation and Exportation. Chapter V.—Levy of, and Exemption from, Customs-duties.)

(*4*) Such regulations may apply to all goods the importation of which is prohibited by section 18 or under section 19, or different regulations may be made respecting different classes of such goods or of offences in relation to such goods.

(*5*) The regulations may provide for the informant reimbursing any public officer and the [1][Central Government] all expenses and damages incurred in respect of any detention made on his information, and of any proceedings consequent on such detention.

[2][(*6*) All regulations under this section shall be published in the Gazette of India and, with the consent of the [3][State] Government concerned, in the Official Gazette of each [4][State.]]

CHAPTER V.

LEVY OF, AND EXEMPTION FROM, CUSTOMS-DUTIES.

20. (1) Except as hereinafter provided, customs-duties shall be levied at such rates as may be prescribed by or under any law[5] for the time being in force, on— **Goods dutiable.**

(*a*) goods imported or exported by sea into or from any customs-port from or to any foreign port;

(*b*) opium, salt or salted fish imported by sea from any customs-port into any other customs-port;

(*c*) goods brought from any foreign port to any customs-port, and without payment of duty, there transhipped for, or thence carried to, and imported at, any other customs-port; and

(*d*) goods brought in bond from one customs-port to another.

[6]* (2) — * Hdm* 84

21. Except as otherwise expressly provided by any law for the time being in force, goods whereof any article liable to duty under this Act forms a part or ingredient shall be chargeable with the full duty which would be payable on such goods if they were entirely composed of such article, or, if composed of more than one article liable to duty, then with the full duty which would be payable on such goods if they were entirely composed of the article charged with the highest rate of duty. **Goods partially composed of dutiable articles.**

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[1] Subs. by the A. O. 1937 for "Secretary of State for India in Council".

[2] Subs. by the A. O. 1937 for the original sub-section.

[3] Subs. by the A. O. 1950 for "Provincial".

[4] Subs. by the A. O. 1950 for "Province".

[5] *See* now the Indian Tariff Act, 1934 (32 of 1934).

[6] The proviso to s. 20 was rep. by the Sea Customs (Amendment) Act, 1924 (8 of 1924), s. 2.

(*Chapter V.—Levy of, and Exemption from, Customs-duties.*)

Power to fix tariff values.

22. The [1][Central Government] may from time to time, by notification in the [2][Official Gazette], fix, for the purpose of levying duties, tariff-values of any goods exported or imported by sea on which customs-duties are by law imposed and alter any such values fixed by any Tariff Act[3] for the time being in force.

General power to exempt from customs duties.

23. The [1][Central Government] may from time to time, by notification in the [2][Official Gazette], [4]exempt any goods imported into, or exported from, [5][the States], or into or from any specified port therein, from the whole or any part of the customs-duties leviable on such goods.

Power to authorize, in special cases, exemption from duty.

The [6][Chief Customs-authority] may [7][with the previous sanction of the [1][Central Government]], by special order in each case, exempt from the payment of duty, under circumstances of an exceptional nature, to be stated in such order, any goods on which customs-duties are leviable.

Baggage in actual use.

24. The Customs-collector may, subject to any general rules relating to the landing and shipping of passengers' baggage and the passing of the same through the custom-house, which may be made under section 75, pass free of duty any baggage in actual use and for this purpose may determine, subject to any such rules, whether any goods shall be treated as baggage in actual use, or as goods subject to duty.

Re-imported articles of country-produce.

25. If goods produced or manufactured in [5][the States] be imported into any customs-port from any foreign port, such goods shall be liable to all the duties, conditions and restrictions (if any) to which goods of the like kind and value not so produced or manufactured are liable on the first importation thereof:

Proviso.

Provided that, if such importation takes place within three years after the exportation of such goods, and it is proved to the satisfaction of the Customs-collector that the property in such goods has continued in the person by whom, or on whose account, they were exported, the goods may be admitted ~~without payment of duty~~. ins. Act 9.

Excise-duty on importation of certain country goods.

26. Any goods produced or manufactured in [5][the States] which have been exported therefrom, and on the exportation of which any drawback of excise has been received, shall, on being imported into any customs-port, be

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[1] Subs. by the A. O. 1937 for "G. G. in C."

[2] Subs. by the A. O. 1937 for "Gazette of India".

[3] *See* now the Indian Tariff Act, 1934 (32 of 1934).

[4] For notifications under s. 23, *see* Gen. R. & O., Supplementary Vol. VI, pp. 43-47; and *ibid.*, 1943-1945 Vol., p. 205.

[5] Subs. by the A. O. 1950 for "the Provinces" which had been subs. by the A. O. 1948 for "British India".

[6] Subs. by the Central Board of Revenue Act, 1924 (4 of 1924), s. 4 and Sch., for "L. G.".

[7] Ins. by the Indian Tariff Act, 1894 (8 of 1894), s. 11.

subjected, unless the [1][Chief Customs-officer] in any particular case otherwise directs by special order, to payment of excise duty, at the rate to which goods of the like kind and quality are liable at such port.

Goods derelict and wreck.

27. All goods derelict, jetsam, flotsam and wreck, brought or coming into any place in [2][the States], shall be subject to the same duties, if any, to which goods of the like kind are for the time being subject on importation at any customs-port, and shall in other respects be dealt with as if they were imported from a foreign port, unless it be shown to the satisfaction of the Customs-collector that such goods are the produce or manufacture of any place from which they are entitled to be admitted duty-free.

Country-provisions and stores may be shipped free of duty.

28. Provisions and stores produced or manufactured in [2][the States] required for use on board of any vessel proceeding to any foreign port, may be shipped free of duty, whether of customs or excise, in such quantities as the Customs-collector determines with reference to the tonnage of the vessel, the numbers of the crew and passengers, and the length of the voyage on which the vessel is about to depart:

Provided that no rum shall be so shipped on any vessel going on a voyage of less than thirty days' probable duration.

Owner to declare real value, etc., of goods in bill of entry or shipping bill.

29. On the importation into, or exportation from, any customs-port of any goods, whether liable to duty or not, the owner of such goods shall, in his bill of entry or shipping bill, as the case may be, state the real value, quantity and description of such goods to the best of his knowledge and belief, and shall subscribe a declaration of the truth of such statement at the foot of such bill.

Power to require production of invoice, etc.

In case of doubt, the Customs-collector may require any such owner or any other person in possession of any invoice, broker's note, policy of insurance or other document, whereby the real value, quantity or description of any such goods can be ascertained, to produce the same, and to furnish any information relating to such value, quantity or description which it is in his power to furnish. And thereupon such person shall produce such document and furnish such information:

Provided that, if the owner makes and subscribes a declaration before the Customs-collector, to the effect that he is unable, from want of full information, to state the real value or contents of any case, package or parcel of goods, then the Customs-collector shall permit him, previous to the entry thereof, (1) to open such case, package or parcel, and examine the contents in presence of an officer of Customs, or (2) to deposit such case, package or

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[1] Subs. by the Decentralization Act, 1914 (4 of 1914), s. 2 and Sch., Pt. I, for "Chief Customs-authority".

[2] Subs. by the A. O. 1950 for "the Provinces" which had been subs. by the A. O. 1948 for "British India".

parcel in a public warehouse appointed under section 15 without warehousing the same, pending the production of such information.

"Real value" defined.

30. For the purposes of this Act the real value shall be deemed to be—

(*a*) the wholesale cash price, less trade discount, for which goods of the like kind and quality are sold, or are capable of being sold, at the time and place of importation or exportation, as the case may be, without any abatement or deduction whatever, except (in the case of goods imported) of the amount of the duties payable on the importation thereof: or

(*b*) where such price is not ascertainable, the cost at which goods of the like kind and quality could be delivered at such place, without any abatement or deduction except as aforesaid.

Examination of *ad valorem* goods.

31. Goods chargeable with duty upon the value thereof, but for which a specific value is not fixed by law for the purpose of levying duties thereon, shall, without unnecessary delay, be examined by an officer of Customs. If it appears that the real value of such goods is correctly stated in the bill of entry or shipping bill, the goods shall be assessed in accordance therewith.

Procedure where such goods are under-valued by owner.

32. If it appears that such goods are properly chargeable with a higher rate or amount of duty than that to which they would be subject according to the value thereof as stated in the bill of entry or shipping bill, such officer may detain such goods.

In every such case the detaining officer shall forthwith give notice in writing to the owner of the goods of their detention, and of the value thereof as estimated by him; and the Customs-collector shall, within two clear working days after such detention, or within such reasonable period as may with the consent of the parties be arranged, determine either to deliver such goods on payment of duty charged according to the entry of such owner, or to retain the same for the use of [1][the Central Government].

If the goods be retained for the use of [1][the Central Government], the Customs-collector shall cause the full amount stated in the bill as their real value to be paid to the owner in full satisfaction for such goods in the same manner as if they had been transferred by ordinary sale, and shall, after due notice in the [2][Official Gazette] or some local newspaper, and without

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[1] Subs. by the A. O. 1937 for "Govt.".

[2] Subs. by the A. O. 1937 for "local official Gazette".

unnecessary delay, cause them to be put up to public auction in wholesale lots for cash on delivery.

If the Customs-collector deems the highest offer made at such sale to be inadequate, he may either adjourn the sale to some other day, to be notified as aforesaid, or buy in the goods, and without unnecessary delay dispose of them for the benefit of [1][the Central Government].

If the proceeds arising from such sale exceed the sum paid to the owner, together with (in the case of goods imported) the duty to which the goods are liable and all charges incurred by [1][the Central Government] in connection with them, a portion not exceeding one-half of the overplus shall, at the discretion of the Chief Officer of Customs, be payable to the officer who detected the undervaluation of the goods.

Nothing in this section shall prevent the Chief Officer of Customs, when he has reason to believe that any such undervaluation was solely the result of accident or error, from permitting the owner of the goods, on his application for that purpose, to amend such entry, on payment of such increased rate of duties on the excess of the amended over the original valuation, or on such other terms as the Chief Officer of Customs may determine.

Abatement allowed on damaged goods.

33. If, on the first examination of any such goods under section 31, the owner thereof states in writing that such goods are, in consequence of damage sustained before delivery of the bill of entry, of value less than that stated in such bill, the Customs-collector, on being satisfied of the fact, may allow abatement of duty accordingly.

Reduced duty how determined

The reduced duty to be levied on such goods may be ascertained by either of the following methods, at the option of the owner :—

(*a*) the real value of such goods may be fixed on appraisement by an officer of Customs and the duty may be assessed on the value so fixed; or

(*b*) the goods may, after due notice in the [2][Official Gazette] or some local newspaper, be sold by public auction at such time (within thirty days from the date of delivery of the bill of entry), and at such place, as the Customs-collector appoints; and the duty may be assessed on the gross amount realized by such sale, without any abatement or deduction, except (in the case of goods imported) of so much as represents the duties payable on the importation thereof.

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[1] Subs. by the A. O. 1937 for "Govt.".

[2] Subs. by the A. O. 1937 for "local official Gazette".

(Chapter V.—Levy of, and Exemption from, Customs-duties.)

Deterioration of tariff-value goods.

34. When any goods, the value of which has been fixed by law for the purpose of levying duties thereon, have, before delivery of the bill of entry, deteriorated to the extent of more than one-tenth of their value, the duty on such goods shall, if the owner thereof so desires, be assessed *ad valorem*.

The real value of such goods shall be ascertained as provided in section 33; and the duty shall be assessed thereon.

Abatement of duty on goods on which duty is levied on quantity.

[1][**34A.** Where the Customs-collector is satisfied that any goods on which duties are levied on quantity and not on value, and which are of a kind to which the [2][Central Government] has, by notification in the [3][Official Gazette], declared[4] that the provisions of this section shall apply, have before delivery of the bill of entry deteriorated to the extent of more than one-tenth of their value, he may allow an abatement of duty proportionate to the extent of such deterioration.]

No abatement when duty is levied on quantity.

35. No abatement of duty on account of [5][any deterioration] shall be allowed on wine, spirit or beer, or [6][save as provided by section 34A] on any other articles on which duties are levied on quantity and not on value.

Restriction on amendment of bill of entry or shipping bill.

36. Except as provided in section 94, no amendment of a bill of entry or shipping bill relating to goods assessed for duty on the declared value, quantity or description thereof shall be allowed after such goods have been removed from the custom-house.

Alteration of import-duty or tariff valuation.

37. The rate of duty and the tariff valuation (if any) applicable to any goods imported shall be the rate and valuation in force on the date on which the bill of entry thereof is delivered to the Customs-collector under section 86:

[7][Provided that, if such goods are warehoused under this Act, the rate and valuation (if any) applicable thereto shall be the rate and valuation in force on the date [8][of the actual removal of such goods from the warehouse in the case of goods delivered out of a warehouse for home consumption, and in the case of goods delivered out of a warehouse for removal under bond to be re-warehoused where the duty is paid on such goods without their being re-warehoused, the rate and valuation (if any) in force on the date on which duty is paid].]

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[1] Ins. by the Sea Customs (Amendment) Act, 1927 (8 of 1927), s. 2.

[2] Subs. by the A. O. 1937 for "G. G. in C.".

[3] Subs. by the A. O. 1937 for "Gazette of India".

[4] For such a declaration, *see* Gen. R. & O., Supplementary Vol. I, pp. 333-334.

[5] Subs. by Act 8 of 1927, s. 3, for "damage".

[6] Ins. by s. 3, *ibid.*

[7] This proviso was subs. by the Sea Customs Act (1878) Amendment Act, 1889 (8 of 1889), s. 1, for the original provisos.

[8] Subs. by the Sea Customs (Amendment) Act, 1915 (9 of 1915), s. 2, for "on which application is made to clear such goods from the warehouse for home consumption".

(Chapter V.—Levy of, and Exemption from, Customs-duties.)

Explanation.—A bill of entry shall, for the purposes of this section, be deemed to be delivered when it is first presented to the proper officer of Customs.

38. The rate of duty and tariff-valuation (if any) applicable to any goods exported shall be the rate and valuation in force when a shipping bill of such goods is delivered under section 137:

Alteration of export-duty or tariff-valuation.

[1][Provided that where the shipment of any goods is permitted without a shipping bill or in anticipation of the delivery of a shipping bill, the rate of duty and tariff valuation, if any, applicable shall be the rate and valuation in force at the time when shipment of the goods commences.]

39. When customs-duties or charges have been short-levied through inadvertence, error, collusion or misconstruction on the part of the officers of Customs, or through mis-statement as to real value, quantity or description on the part of the owner,

Payment of duties short-levied or erroneously refunded.

or when any such duty or charge, after having been levied, has been, owing to any such cause, erroneously refunded,

the person chargeable with the duty or charge so short-levied, or to whom such refund has erroneously been made, shall pay the deficiency or repay the amount paid to him in excess ~~on demand being made~~ within three months from the date of the first assessment or making of the refund;

and the Customs-collector may refuse to pass any goods belonging to such person until the said deficiency or excess be paid or repaid.

40. No customs-duties or charges which have been paid, and of which repayment, wholly or in part, is claimed in consequence of the same having been paid through inadvertence, error or misconstruction, shall be returned, unless such claim is made within three months from the date of such payment.

No refund of charges erroneously levied or paid, unless claimed within three months.

41. The Customs-collector may, if he thinks fit, instead of requiring payment of customs-duties and charges due from any mercantile firm or public body, at the time such duties and charges are payable under this Act, keep with such firm or body an account-current of such duties and charges. Such account shall be settled at intervals not exceeding one month, and such firm or body shall make a deposit or furnish security sufficient in the opinion of the Customs-collector to cover the amount which may at any time be due from them in respect of such duties and charges.

Power to give credit for, and keep account-current of, duties and charges.

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[1] Ins. by the Sea Customs (Amendment) Act, 1914 (12 of 1914), s. 3.

CHAPTER VI.

DRAWBACK.

Drawback allowable on re-export.

42. When any goods, capable of being easily identified, which have been imported by sea into any customs-port from any foreign port, and upon which duties of customs have been paid on importation, are re-exported by sea from such customs-port to any foreign port, or as provisions or stores for use on board a ship proceeding to a foreign port, seven-eighths, [1][or in the case of silver bullion the whole,] of such duties shall, except as otherwise hereinafter provided, be repaid as drawback:

Conditions for grant of drawback.

Provided that, in every such case, the goods be identified to the satisfaction of the Customs-collector at such customs-port, and that the re-export be made within two years from the date of importation, as shown by the records of the custom-house, or within such extended term as the Chief Customs-authority [2][or the Chief Customs-officer,] on sufficient cause being shown, in any case determines:

[2][Provided further that the Chief Customs-officer shall not extend the term to a period exceeding three years.]

Drawback on goods exported to customs-port and thence to foreign port.

43. When any goods, having been charged with import-duty at one customs-port and thence exported to another, are re-exported by sea as aforesaid, drawback shall be allowed on such goods as if they had been so re-exported from the former port:

Proviso.

Provided that, in every such case, the goods be identified to the satisfaction of the officer in charge of the custom-house at the port of final exportation, and that such final exportation be made within three years from the date on which they were first imported into [3][the States].

Drawback on goods taken into use between importation and re-exportation.

[4][**43A.** (1) Notwithstanding anything hereinbefore contained, the repayment of duty as drawback in respect of goods which have been taken into use between importation and re-exportation shall be subject to the provisions of the rules made under sub-section (2).

(2) The [5][Central Government] may, subject to the condition of previous publication, from time to time, by notification in the [6][Official Gazette], make rules[7], in respect of goods which have been taken into use between importation and re-exportation,

(*a*) modifying the amount of duty which shall be repaid as drawback on any such goods or class of such goods, or

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[1] Ins. by the Indian Finance Act, 1930 (15 of 1930), s. 2.
[2] Ins. by the Decentralization Act, 1914 (4 of 1914), s. 2 and Sch., Pt. I.
[3] Subs. by the A. O. 1950 for "the Provinces" which had been subs. by the A. O. 1948 for "British India".
[4] Ins. by the Sea Customs (Amendment) Act, 1934 (21 of 1934), s. 2.
[5] Subs. by the A. O. 1937 for "G. G. in C.".
[6] Subs. by the A. O. 1937 for "Gazette of India".
[7] For such rules, *see* Gen. R. & O., Supplementary Vol. VI, p. 48.

(*b*) prohibiting the repayment of duty as drawback on any such goods or class of such goods, or

(*c*) varying the conditions for the grant of drawback on any such goods or class of such goods by restricting the period after importation within which the goods must be re-exported.]

Drawback of duties on wine and spirit allowed for officers of Navy.

44. A drawback of the whole of the customs-duties shall be allowed on wine and spirit intended for the consumption of any officer of Her Majesty's Navy, on board of any of Her Majesty's ships in actual service unless such wine and spirit have been warehoused without payment of duty on the first entry thereof.

The quantity of wine and spirit on which drawback may be so allowed in any one year for the use of such officers shall not exceed the quantities hereinafter allowed for each such officer respectively; that is to say—

	Gallons.
For every Admiral	1,260
Vice-Admiral	1,050
Rear-Admiral	840
Captain of 1st and 2nd rate	630
Captain of 3rd, 4th and 5th rate	420
Captain of an inferior rate	210
Lieutenant or other Commanding Officer, Marine Officer, Master, Pursor or Surgeon	105

Persons entering such wine or spirit for drawback to declare name and rank of officer claiming same.

45. Every person clearing and claiming drawback for wine or spirit, as provided in section 44, shall state in the shipping bill the name of the officer for whose use such wine or spirit is intended, and of the ship in which he serves as well as the place and date of the last supply for which drawback was allowed.

All such wine and spirit shall be delivered into the charge of the proper officers of Customs at the port of shipment, to be shipped under their care; and when the officer commanding the ship has certified the receipt of such wine and spirit into his charge, and any such officer of Customs has certified the shipment, the drawback shall be paid to the person entitled to receive the same.

Transfer of wine or spirit from one naval officer to another

46. The Customs-collector may permit the transfer of any such wine or spirit from one naval officer to another naval officer on board of the same, or of any other such vessel, as part of his authorised quantity;

or may permit the transhipment of any such wine or spirit from one vessel to another for the use of the same naval officer;

or the re-landing and warehousing of any such wine or spirit for future re-shipment.

The Customs-collector may also receive back the duties for any such wine or spirit, and allow the same to be cleared for home-consumption.

Provisions and stores for *Her Majesty's* Navy.

47. Provisions and stores for the use of Her Majesty's Navy or of any officer thereof which are subject to duty may, in like manner, be transferred, transhipped or re-landed and warehoused, free of duty;

and where duties have been paid on any such provisions or stores required for shipment, drawback of such duties, whether of customs or excise, shall be allowed on receipt of an application in writing from the officer commanding the ship for which they are intended, or from some other officer duly authorized to make such application.

Indian Navy.

48. The provisions of sections 44, 45, 46 and 47 as to officers of Her Majesty's Navy apply also to officers of [1][the Indian Navy] on board of any of the ships of [2][the Indian Navy] proceeding to any port out of India, and the rules prescribed by section 47 as to provisions and stores for the use of Her Majesty's Navy apply also to provisions and stores for the use of [2][the Indian Navy].

Power to declare what goods are identifiable and to prohibit drawback in case of specified foreign port.

49. The [3][Central Government] may from time to time, by notification in the [4][Official Gazette],—

(*a*) declare what goods shall, for the purpose of this Chapter, be deemed to be capable of being easily identified; and

(*b*) prohibit the payment of drawback upon the re-exportation of goods [5][or any specified goods or class of goods] to any specified foreign port [6]* *.

When no drawback allowed.

50. Notwithstanding anything hereinbefore contained, no drawback shall be allowed—

(*a*) upon goods not included in the export manifest, or

(*b*) where the goods to be exported are of less value than the amount of dawback claimed, or

(*c*) where the claim is for drawback amounting, in respect of any single shipment, to less than five rupees, and the Customs-collector thinks fit to reject it, or

(*d*) on salt, salted fish or opium.

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[1] Subs. by the A. O. 1950 for "Her Majesty's Indian Navy". The last two words were subs. by the Amending Act, 1934 (35 of 1934), s. 2 and Sch., for "Indian Marine and Marine Survey".

[2] Subs. by the A. O. 1950 for "such Indian Navy". The last two words were subs. by s. 2 and Sch., *ibid.*, for "Marine or Survey".

[3] Subs. by the A. O. 1937 for "G. G. in C.".

[4] Subs. by the A. O. 1937 for "Gazette of India".

[5] Ins. by the Sea Customs (Amendment) Act, 1914 (12 of 1914), s. 4.

[6] The words "in India" rep. by s. 4, *ibid.*

51. No drawback shall be allowed unless the claim to receive such drawback be made and established at the time of re-export. **Time to claim drawback.**

No such payment of drawback shall be made until the vessel carrying the goods has put out to sea, or unless payment be demanded within six months from the date of entry for shipment. **When payment made.**

52. Every person, or his duly authorized agent, claiming drawback on any goods duly exported, shall make and subscribe a declaration that such goods have been actually exported, and have not been re-landed and are not intended to be re-landed at any customs-port; and that such person was at the time of entry outwards and shipment, and continues to be, entitled to drawback thereon. **Declaration by parties claiming drawback.**

CHAPTER VII.

Arrival and Departure of Vessels.

Arrival and Entry of Vessels inwards.

53. The [1][Chief Customs-authority] may, by notification in the [2]* Official Gazette, fix a place in any river or port, beyond which no vessel arriving shall pass until a manifest has been delivered to the pilot, officer of Customs or other person duly authorized to receive the same. **Power to fix places beyond which inward bound vessels are not to proceed until manifest delivered.**

If, in any river or port wherein a place has been fixed by the [1][Chief Customs-authority] under this section, the master of any vessel arriving remains outside or below the place so fixed, such master shall, nevertheless, within twenty-four hours after the vessel anchors, deliver a manifest to the pilot, officer of Customs or other person authorised to receive the same. **Delivery of manifest when vessel anchors below place so fixed.**

54. If any vessel arrives at any customs-port in which a place has not been so fixed, the master of such vessel shall, within twenty-four hours after such vessel has anchored within the limits of the port, deliver a manifest to the pilot, officer of Customs or other person authorized to receive the same. **Delivery of manifest where no place has been so fixed.**

548 - A. 5 No 94.

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[1] Subs. by the Decentralization Act, 1914 (4 of 1914), s. 2 and Sch., Pt. I, for "L. G."

[2] The word "local" rep. by the Central Board of Revenue Act, 1924 (4 of 1924), s. 4 and Sch.

Signature and contents of manifest.

55. Every manifest shall be signed by the master, and shall specify all goods imported in such vessel, showing separately all goods (if any) intended to be landed, transhipped or taken on to another port, and all ship's stores intended for consumption in port or on the homeward voyage, and shall contain such further particulars, and be made out in such form, as the [1][Chief Customs-officer] may from time to time direct.

Amendment of errors in manifest.

The Customs-collector shall permit the master to amend any obvious error in the manifest, or to supply any omission which in the opinion of such Collector results from accident or inadvertence, by furnishing an amended or supplementary manifest,

and may, if he thinks fit, levy thereon such fee as the [1][Chief Customs-officer] from time to time directs.

Except as herein provided, no import manifest shall be amended.

Duty of person receiving manifest.

56. The person receiving a manifest under section 53 or 54 shall countersign the same and enter thereon such particulars as the [1][Chief Customs-officer] from time to time directs in this behalf.

Bulk not to be broken until manifest, etc., delivered, and vessel entered inwards.

57. No vessel arriving in any customs port shall be allowed to break bulk until a manifest has been delivered as hereinbefore provided; nor until a copy of such manifest, together with an application for entry of such vessel inwards, has been presented by the master to the Customs-collector, and an order has been given thereon for such entry.

Master, if required, to deliver bill of lading, etc., to Customs-collector, and answer questions.

58. The master shall, if required so to do by the Customs-collector at the time of presenting such application, deliver to the Customs-collector the bill of lading or a copy thereof for every part of the cargo laden on board, and any port-clearance, cocket or other paper granted in respect of such vessel at the place from which she is stated to have come, and shall answer all such questions relating to the vessel, cargo, crew and voyage as are put to him by such officer.

The Customs-collector may, if any requisition or question made or put by him under this section is not complied with or answered, refuse to grant such application.

Special pass for breaking bulk.

59. Notwithstanding anything contained in section 57, the Customs-collector may grant, prior to receipt of the manifest, and to the entry inwards of the vessel, a special pass[2] permitting bulk to be broken.

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[1] Subs. by the Decentralization Act, 1914 (4 of 1914), s. 2 and Sch., Pt. I, for "Chief Customs-authority".

[2] For rules made under s. 59 for granting special passes, see Gen. R. & O., Supplementary Vol. I, p. 334.

The granting of such pass shall be subject to such rules as may from time to time be made by the Chief Customs-authority.

60. Notwithstanding anything contained in section 53, 54, 57 or 58, the Customs-collector may accept from the ship's agent, in lieu of the master, delivery of the manifest or of any other document required by those sections to be delivered by the master.

Manifest, etc., may be delivered by ship's agent.

Entry outwards, Port-clearance and Departure of Vessels.

61. No vessel shall take on board any part of her export cargo, until a written application for entry of such vessel outwards, subscribed by the master of such vessel, has been made to the Customs-collector, or before an order has been given thereon by such officer for such entry.

Order for entry outwards to be obtained before export cargo is shipped.

Every application made under this section shall specify the name, tonnage and national character of the vessel, the name of the master, and the name of every place for which cargo is to be shipped.

62. No vessel, whether laden or in ballast, shall depart from any customs-port until a port-clearance has been granted by the Customs-collector or other officer duly authorized to grant the same.

No vessel to depart without port-clearance.

And no pilot shall take charge of any vessel proceeding to sea, unless the master of such vessel produces a port-clearance.

No pilot to take charge of vessel proceeding to sea without production of port-clearance.

63. Every application for port-clearance shall be made by the master at least twenty-four hours before the intended departure of the vessel.

Application for port-clearance.

The master shall at the time of applying for port-clearance—

Master on applying for port-clearance to deliver documents and answer questions.

(*a*) deliver to the Customs-collector a manifest in duplicate in such form as may from time to time be prescribed by the [1][Chief Customs-officer] signed by such master specifying all goods to be exported in the vessel and showing separately all goods and stores entered in the import manifest, and not landed or consumed on board or transhipped;

(*b*) deliver to the Customs-collector such shipping bills or other documents as such Customs-collector acting under the general instructions of such [1][Chief Customs-officer] requires; and

(*c*) answer to the proper officer of Customs such questions touching the departure and destination of the vessel as are demanded of him.

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[1] Subs. by the Decentralization Act, 1914 (4 of 1914), s. 2 and Sch., Pt. I, for "Chief Customs-authority".

(*Chapter VII.—Arrival and Departure of Vessels.*)

The provisions of section 55 relating to the amendment of import manifests shall, *mutatis mutandis,* apply also to export manifests delivered under this section.

Power to refuse port-clearance.

64. The Customs-collector may refuse port-clearance to any vessel until—

(*a*) the provisions of section 63 are complied with;

(*b*) all port-dues and other charges and penalties due by such vessel, or by the owner or master thereof, and all duties payable in respect of any goods shipped therein, have been duly paid, or their payment secured by such guarantee, or by deposit at such rate, as such Customs-collector directs;

(*c*) the ship's agent (if any) delivers to the Customs-collector a declaration in writing to the effect that he will be liable for any penalty imposed under section 167, No. 17, and furnishes security for the discharge of the same;

(*d*) the ship's agent (if any) delivers to the Customs-collector a declaration in writing to the effect that such agent is answerable for the discharge of all claims for damage or short delivery which may be established by the owner of any goods comprised in the import cargo in respect of such goods.

A ship's agent delivering a declaration under clause (*c*) of this section shall be liable to all penalties which might be imposed on the master under section 167, No. 17, and a ship's agent delivering a declaration under clause (*d*) of this section shall be bound to discharge all claims referred to in such declaration.

Grant of port-clearance.

65. When the Customs-collector is satisfied that the provisions of section 63, and if necessary of clauses (*b*) and (*c*) and (*d*) of section 64, have been complied with, he shall grant a port-clearance to the master, and shall return at the same time to such master one copy of the manifest duly countersigned by the proper officer of Customs.

Grant of port-clearance on security of ship's agent.

66. Notwithstanding anything contained in sections 64 and 65, the Customs-collector may (subject to such rules as the Chief Customs-authority may from time to time prescribe) grant a port-clearance to the master when the ship's agent furnishes such security as the Customs-collector deems

sufficient for duly delivering, within five days from the date of such grant, the manifest and other documents specified in section 63.

CHAPTER VIII.

General Provisions affecting Vessels in Port.

67. The Customs-collector at any customs-port may at any time depute at his discretion one or more officers of Customs to board any vessel in or arriving at such port.

Power to depute Customs-officer to board ships.

Every officer of Customs so sent shall remain on board of such vessel by day and by night unless or until the Customs-collector otherwise orders.

Duty of such officer.

68. Whenever an officer of Customs is so deputed on board of any vessel, the master of such vessel shall be bound to receive on board such officer, and one servant of such officer, and to provide such officer and servant with suitable shelter and accommodation, and likewise with a due allowance of fresh water, and with the means of cooking on board.

Officer and servant to be received.

Accommodation of officer and servant.

69. Every officer of Customs so deputed shall have free access to every part of the vessel, and may fasten down any hatchway or entrance to the hold and mark any goods before landing, and lock up, seal, mark or otherwise secure any goods on board of such vessel.

Officers of Customs to have free access to every part of ship, and may seal and secure goods.

If any box, place or closed receptacle in any such vessel be locked, and the key be withheld, such officer shall report the same to the Customs-collector, who may thereupon issue to the officer on board, or to any other officer under his authority, a written order to search.

Power to authorize search and opening of locks.

On production of such order, the officer bearing the same may require that any such box, place or closed receptacle be opened in his presence; and, if it be not opened upon his requisition, he may break open the same.

70. Unless with the written permission of the Customs-collector or in accordance with a general permission granted under section 74, no goods other than passengers' baggage, or ballast urgently required to be shipped for the vessel's safety, shall be shipped or water-borne to be shipped or discharged from any vessel in any customs-port, except in the presence of an officer of Customs.

Goods not to be shipped, discharged, or water-borne except in presence of officer.

(*Chapter VIII.—General Provisions affecting Vessels in Port.*)

Period allowed for discharge and shipment of cargo.

71. When an officer of Customs is deputed under section 67 to remain on board a vessel the tonnage of which does not exceed six hundred tons, a period of thirty working days, reckoned from the date on which he boards such vessel or such additional period as the Customs-collector directs, shall be allowed for the discharge of import-cargo and the shipment of export-cargo on board of such vessel.

One additional day shall, in like manner, be allowed for every fifty tons in excess of six hundred.

No charge shall be made for the services of a single officer of Customs for such allowed number of working days, or for the services of several such officers (if available) for respective periods not exceeding in the aggregate such allowed number of working days.

Consequence of exceeding same.

If the period occupied in the discharge and shipment of cargo be in excess of thirty working days, together with the additional period (if any) allowed under this section, the vessel shall be charged with the expense of the officer of Customs at a rate not exceeding five rupees per diem (Sundays and holidays excepted) for such excess period.

Allowance for period during which vessel is laid up.

In calculating any period allowed, or any charge made under this section, the period (if any) during which a vessel, after the completion of the discharge of import-cargo, and before commencing the shipment of export-cargo, is laid up by the withdrawl of the officer of Customs, upon application from the master, shall be deducted.

Goods not to be landed, etc., on Sundays or holidays, without permission, nor except within fixed hours.

72. Except with the written permission of the Customs-collector, no goods, other than passengers' baggage, shall in any customs-port be discharged from any vessel, or be shipped or water-borne to be shipped,—

(*a*) on any Sunday or on any holiday or day on which the discharge or shipping of cargo, as the case may be, is prohibited by the Chief Customs-authority;

(*b*) on any day, except between such hours as such authority from time to time appoints by notification in the Official Gazette.

Goods not to be shipped, etc., except at wharves.

73. No goods shall in any customs-port be landed at any place other than a wharf or other place duly appointed for that purpose, and

unless with the written permission of the Customs-collector, or when a general permission has been granted under section 74, no goods shall in any customs-port be shipped or water-borne to be shipped from any place other than a wharf or other place duly appointed for that purpose.

(Chapter VIII.—General Provisions affecting Vessels in Port.)

Power to exempt from sections 70 and 73.

74. Notwithstanding anything contained in section 70 or 73, the Chief Customs-authority may, by notification in the [1]* Official Gazette, give general permission for goods to be shipped or water-borne to be shipped in any customs-port from all or any places not duly appointed as wharves, and without the presence or authority of an officer of Customs.

Power to make rules regarding baggage and mails.

75. The Chief Customs-authority may from time to time make rules[2] for the landing and shipping of passengers' baggage and the passing of the same through the custom-house: and for the landing, shipping and clearing of parcels forwarded by [3][Government of India's] or other mails, or by other regular packets and passenger-vessels.

Landing fees.

When any baggage or parcels is or are made over to an officer of Customs for the purpose of being landed, a fee of such amount as the [4][Chief Customs-authority] from time to time directs shall be chargeable thereon, as compensation for the expense and trouble incurred in landing and depositing the same in the custom-house.

Boat-note.

76. When any goods are water-borne for the purpose of being landed from any vessel and warehoused or cleared for home consumption, or of being shipped for exportation on board of any vessel, there shall be sent, with each boatload or other separate despatch, a boat-note specifying the number of packages so sent and the marks and numbers or other description thereof.

Each boat-note for goods to be landed shall be signed by an officer of the vessel, and likewise by the officer of Customs on board, if any such officer be on board, and shall be delivered on arrival to any officer of Customs authorized to receive the same.

Each boat-note for goods to be shipped shall be signed by the proper officer of Customs, and, if an officer of Customs is on board of the vessel on which such goods are to be shipped, shall be delivered to such officer. If no such officer be on board, every such boat-note shall be delivered to the master of the vessel, or to an officer of the vessel appointed by him to receive it.

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1 The word "local" rep. by the Central Board of Revenue Act, 1924 (4 of 1924), s. 4 and Sch.

2 For such rules, *see* Gen. R & O., Supplementary Vol. I, pp. 335-340.

3 Subs. by the A. O. 1950 for "Her Majesty's".

4 Subs. by the Decentralization Act, 1914 (4 of 1914), s. 2 and Sch., Pt. I, for "L. G.".

The officer of Customs who receives any boat-note of goods landed, and the officer of the Customs, master or other officer, as the case may be, who receives any boat-note of goods shipped, shall sign the same and note thereon such particulars as the [1][Chief Customs-officer] may from time to time direct.

The [2][Chief Customs-authority] may from time to time, by notification in the [3]* Official Gazette, suspend the operation of this section in any customs-port or part thereof.

Goods water-borne to be forthwith landed or shipped.

77. All goods water-borne for the purpose of being landed or shipped shall be landed or shipped without any unnecessary delay.

Such goods not to be transhipped without permission.

78. Except in cases of imminent danger, no goods discharged into or loaded in any boat for the purpose of being landed or shipped shall be transhipped into any other boat without the permission of an officer of Customs.

Power to prohibit plying of unlicensed cargo-boats.

79. The [2][Chief Customs-authority] may declare with regard to any customs-port, by notification in the [3]* Official Gazette, that, after a date therein specified, no boat not duly licensed and registered shall be allowed to ply as a cargo-boat for the landing and shipping of merchandise within the limits of such port.

Issue of licenses and registration of cargo-boats.

In any port with regard to which such notification has been issued, the Chief Officer of Customs or other officer whom the [2][Chief Customs-authority] appoints in this behalf, may, subject to such rules and on payment of such fees as the [2][Chief Customs-authority] from time to time prescribes by notification in the [3]* Official Gazette, issue licenses for and register cargo-boats. Such officer may also, subject to rules so prescribed, cancel any license so issued.

Power to require goods to be weighed or measured on board before landing or after shipment.

80. The Customs-collector may, whenever he thinks fit, require that goods stowed in bulk, and brought by sea or intended for exportation, shall be weighed or measured on board ship before landing or after shipment, and may levy duty according to the result of such weighing or measurement.

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[1] Subs. by the Decentralization Act, 1914 (4 of 1914), s. 2 and Sch., Pt. I, for "Chief Customs-authority".

[2] Subs. for "L. G.", *ibid.*

[3] The word "local" rep. by the Central Board of Revenue Act, 1924 (4 of 1924), s. 4 and Sch.

CHAPTER IX.

Of Discharge of Cargo and Entry Inwards of Goods.

Discharge of cargo may commence on receipt of due permission.

81. When an order for entry inwards of any vessel which has arrived in any Customs-port or a special pass permitting such vessel to break bulk has been given, the discharge of the cargo of such vessel may be proceeded with.

Goods not to leave ship unless entered in manifest.

82. Except as otherwise provided in this Act, no goods shall be allowed to leave any such vessel, unless they are entered in the original manifest of such vessel, or in an amended or supplementary manifest received under section 55.

Procedure in respect of goods not landed within time allowed.

83. If the owner of any goods (except such as have been shown in the import-manifest as not to be landed) does not land such goods within such period as is specified in the bill of lading of such goods, or, if no period is so specified, within such number of working days, not exceeding fifteen, after the entry of the vessel importing the same, as the [1][Chief Customs-authority] from time to time appoints by notification in the Official Gazette, or

if the cargo of any vessel, with the exception of only a small quantity of goods, has been discharged previously to the expiration of the period so specified or appointed, as the case may be—

the master of such vessel or, on his application, the proper officer of Customs, may then carry such goods to the custom-house, there to remain for entry.

The Customs-collector shall thereupon take charge of, and grant receipts for, such goods;

and if notice in writing has been given by the master that the goods are to remain subject to a lien for freight, primage, general average, or other charges of a stated amount, the Customs-collector shall hold such goods until he receives notice in writing that the said charges are paid.

Power to land small parcels.

84. At any time after the arrival of any vessel the Customs-collector may, with the consent of the master of such vessel, cause any small package or parcel of goods to be carried to the custom-house, there to remain for entry, in charge of the officers of Customs, during the remainder of the working days allowed under this Act for the landing of such package or parcel.

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[1] Subs. by the Decentralization Act, 1914 (4 of 1914), s. 2 and Sch., Pt. I, for "L. G.".

Notice regarding unclaimed packages.

If any package or parcel so carried to the custom-house remains unclaimed on the expiration of the number of working days so allowed for its landing, or at the time of the clearance outwards of the vessel from which it was landed, the master may give such notice as is provided in section 83, and the officer in charge of the custom-house shall thereupon hold such package or parcel as provided in that section.

Power to permit immediate discharge.

85. Notwithstanding anything contained in section 83 and 84, the Customs-collector in any customs-port to which the [1][Chief Customs-authority] by notification in the [2]* Official Gazette, declares this section to be applicable, may permit the master of any vessel, immediately on receipt of an order under section 57 or a special pass under section 59, to discharge the cargo of such vessel or any portion thereof into the custody of the ship's agents if willing to receive the same, for the purpose of landing the same forthwith—

(*a*) at the custom-house or any specified landing-place or wharf; or

(*b*) at any landing-place or wharf belonging to any Port Commissioners, Port Trust or other public body or company.

Any ship's agent so receiving such cargo or portion shall be bound to discharge all claims for damage or short delivery which may be established in respect of the same by the owner thereof, and shall be entitled to recover from such owner his charges for service rendered, but not for commission or the like, where any agent for the landing of such cargo or portion has been previously appointed by the owner and such appointment is unrevoked.

The Customs-collector shall take charge of all goods discharged under clause (*a*) of this section, and otherwise proceed in relation thereto as provided in sections 83 and 88.

A public body or company at whose landing place or wharf any goods are discharged under clause (*b*) of this section shall not permit the same to be removed without an order in writing from the Customs-collector.

Entry for home consumption or warehousing.

86. The owner of any goods imported shall, on the landing thereof from the importing ship, make entry of such goods for home consumption or

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[1] Subs. by the Decentralization Act, 1914 (4 of 1914), s. 2 and Sch., Pt. I, for "L. G.".

[2] The word "local" rep. by the Central Board of Revenue Act, 1924 (4 of 1924), s.4 and Sch.

warehousing by delivering to the Customs-collector a bill of entry thereof in duplicate, in such form and containing such particulars, in addition to the particulars specified in section 29, as may, from time to time, be prescribed by the [1][Chief Customs-officer].

The particulars of such entry shall correspond with the particulars given of the same goods in the manifest of the ship.

Assessment of dutiable goods.

87. On the delivery of such bill the duty (if any) leviable on such goods shall be assessed, and the owner of such goods may then proceed to clear the same for home consumption, or warehouse them, subject to the provisions hereinafter contained.

Procedure in case of goods not cleared or warehoused within four months after entry of vessel.

88. If any goods are not entered and cleared for home consumption, or warehoused within four months from the date of entry of the vessel, such goods may, after due notice to the owner, if his address can be ascertained, and in the local official Gazette, be sold by public auction, and the proceeds thereof shall be applied, first, to the payment of freight, primage and general average, if the goods are held by the Customs-collector subject to such charges under notice given under section 83, 84 or 85; next to the payment of the duties which would be leviable on such goods if they were then cleared for home consumption, and next to the payment of the other charges (if any) payable to the Customs-collector in respect of the same.

The surplus, if any, shall be paid to the owner of the goods, on his application for the same: provided that such application be made within one year from the sale of the goods, or that sufficient cause be shown for not making it within such period.

Power to direct sale of perishable goods.

If any goods of which the Customs-collector has taken charge under section 83, 84 or 85 be of a perishable nature, the Customs-collector may at any time direct the sale thereof, and shall apply the proceeds in like manner;

Proviso.

Provided that, where any goods liable to be sold under this section are arms, ammunition or military stores, they may be sold or otherwise disposed of at such place (whether within or without [2][the States] and in such manner as [3][the Chief Customs-authority may, with the concurrence of the [4][Central Government], direct]:

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[1] Subs. by the Decentralization Act, 1914 (4 of 1914), s. 2 and Sch., Pt. I, for "Chief Customs-authority".

[2] Subs. by the A. O. 1950 for "the Provinces" which had been subs. by the A. O. 1948 for "British India".

[3] Subs. by the Central Board of Revenue Act, 1924 (4 of 1924), s. 4 and Sch., for "the L. G. may from time to time direct".

[4] Subs. by the A. O. 1937 for "L. G.".

(*Chapter IX.—Discharge of Cargo and Entry inwards of Goods. Chapter X.—Of Clearance of Goods for Home Consumption. Chapter XI.—Warehousing.*)

Provided also that nothing in this section shall authorize the removal for home consumption of any dutiable goods without payment of duties of customs thereon.

CHAPTER X.

Of Clearance of Goods for Home Consumption.

Clearance for home consumption.

89. When the owner of any goods entered for home consumption, and (if such goods be liable to duty) assessed under section 87, has paid the import-duty (if any) assessed on such goods and any charges payable under this Act in respect of the same, the Customs-officer may make an order clearing the same; and such order shall be sufficient authority for the removal of such goods by the owner.

CHAPTER XI.

Warehousing.

Of the Admission of Goods into a Warehouse.

Application to warehouse.

90. When any dutiable goods have been entered for warehousing and assessed under section 87, the owner of such goods may apply for leave to deposit the same in any warehouse appointed or licensed under this Act.

Form of application.

91. Every such application shall be in writing signed by the applicant, and shall be in such form as is from time to time prescribed by the Chief Customs-authority.

Warehousing bond.

92. When any such application has been made in respect of any goods, the owner of the goods to which it relates shall execute a bond, binding himself, in a penalty of twice the amount of duty assessed under section 87 on such goods,—

(*a*) to observe all rules prescribed by this Act in respect of such goods;

(*b*) to pay, on demand, all duties, rent and charges claimable on account of such goods under this Act, together with interest on the same from the date of demand, at such rate not exceeding six per cent. per annum as is for the time being fixed by the Chief Customs-authority; and

(*c*) to discharge all penalties incurred for violation of the provisions of this Act in respect of such goods.

Every such bond shall be in the form marked A hereto annexed, or, when such form is inapplicable or insufficient, in such other form as is from time to time prescribed by the Chief Customs-authority. **Form of bond.**

and shall relate to the cargo or portion of the cargo of one vessel only.

93. When the provisions of sections 91 and 92 have been complied with in respect of any goods, such goods shall be forwarded in charge of an officer of Customs to the warehouse in which they are to be deposited. **Forwarding of goods to warehouse.**

A pass shall be sent with the goods specifying the name of the importing vessel and of the bonder, the marks, numbers and contents of each package, and the warehouse or place in the warehouse wherein they are to be deposited.

94. On receipt of the goods, the pass shall be examined by the warehouse-keeper, and shall be returned to the Customs-collector. **Receipt of goods at warehouse.**

No package, butt, cask or hogshead shall be admitted into any warehouse unless it bear the marks and numbers specified in, and otherwise correspond with, the pass for its admission.

If the goods be found to correspond with the pass, the warehouse-keeper shall certify to that effect on the pass, and the warehousing of such goods shall be deemed to have been completed.

If the goods do not so correspond, the fact shall be reported by the warehouse-keeper for the orders of the Customs-collector, and the goods shall either be returned to the custom-house in charge of an officer of Customs, or kept in deposit pending such orders as the warehouse-keeper deems most convenient.

If the quantity or value of any goods has been erroneously stated in the bill of entry, the error may be rectified at any time before the ware-housing of the goods is completed, and not subsequently.

95. Except as provided in section 100, all goods shall be warehoused in the packages, butts, casks or hogsheads in which they have been imported. **Goods how warehoused**

96. Whenever any goods are lodged in a public warehouse or a licensed private warehouse, the warehouse-keeper, or, in the case of the Bengal Bonded Warehouse Association, the Secretary of the said Association, shall deliver a warrant signed by him as such to the person lodging the goods. **Warrant to be given when goods are warehoused.**

Form of warant.

Such warrant shall be in the form B hereto annexed, and shall be transferable by endorsement; and the endorsee shall be entitled to receive the goods specified in such warrant on the same terms as those on which the person who originally lodged the goods would have been entitled to receive the same.

The [1][Chief Customs-authority] may, by notification in the [2]* Official Gazette, exempt salt and salted fish from the operation of this section, and may in like manner cancel such exemption.

Rules relating to Goods in a Warehouse.

Access of Customs-officer to private warehouse.

97. The Customs-collector, or any officer deputed by him for the purpose, shall have access to any private warehouse licensed under this Act.

Power to cause packages lodged in warehouse to be opened and examined.

98. The Customs-collector may at any time by order in writing direct that any goods or packages lodged in any warehouse shall be opened, weighed or otherwise examined; and, after any goods have been so opened or examined, may cause the same to be sealed or marked in such manner as he thinks fit.

When any goods have been so sealed and marked after examination, they shall not be again opened without the permission of the Customs-collector; and, when any such goods have been opened with such permission, the packages shall, if he thinks fit, be again sealed or marked as before.

Access of owners to warehoused goods.

99. Any owner of goods lodged in a warehouse shall, at any time within the hours of business, have access to his goods in presence of an officer of Customs, and an officer of Customs shall, upon application for the purpose being made in writing to the Customs-collector, be deputed to accompany such owner.

When an officer of Customs is specially employed to accompany such owner, a sum sufficient to meet the expense thereby incurred shall, if the Customs-collector so require, be paid by such owner to the Customs-collector, and such sum shall, if the Customs-collector so direct, be paid in advance.

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[1] Subs. by the Decentralization Act, 1914 (4 of 1914), s. 2 and Sch., Pt. I, for "L. G.".

[2] The word "local" rep. by the Central Board of Revenue Act, 1924 (4 of 1924) s. 4 and Sch.

(*Chapter XI.—Warehousing.*)

100. With the sanction of the Customs-collector, and after such notice given, and under such rules[1] and conditions as the Chief Customs authority from time to time prescribes, any owner of goods may, either before or after warehousing the same,— Owner's power to deal with warehoused goods.

(*a*) sort, separate, pack and repack the goods, and make such alterations therein as may be necessary for the preservation, sale, shipment or disposal thereof (such goods to be repacked in the packages in which they were imported, or in such other packages as the Customs-collector permits);

(*b*) fill up any casks of wine, spirit or beer from any casks of the same secured in the same warehouse;

(*c*) mix any wines or spirit of the same sort secured in the same warehouse, erasing from the cask all import brands, unless the whole of the wine or spirit so mixed be of the same brand;

(*d*) bottle-off wine or spirit from any casks;

(*e*) take such samples of goods as may be allowed by the Customs-collector with or without entry for home consumption, and with or without payment of duty, except such as may eventually become payable on a deficiency of the original quantity.

After any such goods have been so separated and repacked in proper or approved packages, the Customs-collector may, at the request of the owner of such goods, cause or permit any refuse, damaged or surplus goods remaining after such separation or repacking (or, at the like request, any goods which may not be worth the duty) to be destroyed, and may remit the duty payable thereon.

101. If goods be lodged in a public warehouse, the owner shall pay monthly, on receiving a bill or written demand for the same from the Customs-collector or other officer deputed by him in that behalf, rent and warehouse-dues at such rates as the [2][Chief Customs-officer] may fix. Payment of rent and warehouse-dues.

A table of the rates of rent and warehouse-dues so fixed shall be placed in a conspicuous part of such warehouse.

If any bill for rent or warehouse-dues presented under this section is not discharged within ten days from the date of presentation, the Customs-collector may, in the discharge of such demand (any transfer or assignment

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[1] For such rules *see* Gen. R. & O., Supplementary Vol. I, pp. 343-349.

[2] Subs. by the Decentralization Act, 1914 (4 of 1914), s. 2 and Sch., Pt. I, for "Chief Customs-authority or such officer of customs as such authority from time to time appoints in this behalf".

of the goods notwithstanding) cause to be sold by public auction, after due notice in the [1][Official Gazette], such sufficient portion of the goods as he may select.

Out of the proceeds of such sale, the Customs-collector shall first satisfy the demand for the discharge of which the sale was ordered and shall then pay over the surplus (if any) to the owner of the goods:

Provided that the application for such surplus be made within one year from the date of the sale of the goods or that sufficient cause be shown for not making it within such period.

Goods not to be taken out of warehouse except as provided by this Act.

102. No warehoused goods shall be taken out of any warehouse, except on clearance for home consumption or shipment, or for removal to another warehouse, or as otherwise provided by this Act.

Period for which goods may remain warehoused under bond.

103. Any goods warehoused may be left in the warehouse, in which they are deposited, or in any warehouse to which they may in manner hereinafter provided be removed, till the expiry of three years after the date of the bond executed in relation to such goods under section 92. The owner of any goods remaining in a warehouse on the expiry of such period shall clear the same for home consumption or shipment in manner hereinafter provided:

Goods in private warehouse on cancellation of license.

Provided that when the license for any private warehouse is cancelled, and the Customs-collector gives notice of such cancelment to the owner of any goods deposited in such warehouse, such owner shall in manner hereinafter provided, and within seven days from the date on which such notice is given, remove such goods to another warehouse or clear them for home consumption or shipment.

Of the Removal of Goods from one Warehouse to another.

Power to remove goods from one warehouse to another in same port.

104. Any owner of goods warehoused under this Act may, at any time within three years from the date of the bond executed in respect of such goods under section 92, and with the permission of the Chief Customs-officer, and on such conditions and after giving such security (if any) as such officer directs, remove goods from one warehouse to another warehouse in the same port.

When any owner desires so to remove any goods, he shall apply for permission to do so in such form as the [2][Chief Customs-officer] from time to time prescribes.

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[1] Subs. by the A. O. 1937 for "local official Gazette".

[2] Subs. by the Decentralization Act, 1914 (4 of 1914), s. 2 and Sch., Pt. I, for "Chief Customs-authority".

(*Chapter XI.—Warehousing.*)

105. Any owner of goods warehoused at any warehousing port may, from time to time, within the said period of three years, remove the same by sea or by inland carriage, in order to be re-warehoused at any other warehousing port.

Power to remove goods from one port to another.

When any owner desires so to remove any goods for such purpose, he shall apply to the Chief Customs-officer, stating the particulars of the goods to be removed, and the name of the port to which it is intended that they shall be removed, together with such other particulars, and in such manner and form, as the [1][Chief Customs-officer] from time to time prescribes.

Procedure.

106. When permission is granted for the removal of any goods from one warehousing port to another under section 105, an account containing the particulars thereof shall be transmitted by the proper officer of the port of removal to the proper officer of the port of destination;

Transmission of account of goods to officers at port of destination.

and the person requiring the removal shall before such removal enter into a bond, with one sufficient surety, in a sum equal at least to the duty chargeable on such goods, for the due arrival and re-warehousing thereof at the port of destination within such time, as the [1][Chief Customs-officer] directs.

Bond for due arrival and re-warehousing.

Such bond may be taken by the proper officer either at the port of removal or at the port of destination as best suits the convenience of the owner.

If such bond is taken at the port of destination, a certificate thereof, signed by the proper officer of such port, shall, at the time of the removal of such goods, be produced to the proper officer at the port of removal; and such bond shall not be discharged unless such goods are produced to the proper officer, and duly re-warehoused at the port of destination within the time allowed for such removal, or are otherwise accounted for to the satisfaction of such officer; nor until the full duty due upon any deficiency of such goods, not so accounted for, has been paid.

107. The [1][Chief Customs-officer] may permit any person desirous of removing warehoused goods to enter into a general bond, with such sureties, in such amount, and under such conditions, as the [1][Chief Customs-officer] approves, for the removal, from time to time, of any goods from one warehouse to another, either in the same or in a different port, and for the due

Remover may enter into a general bond.

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[1] Subs. by the Decentralization Act, 1914 (4 of 1914), s. 2 and Sch., Pt. I, for "Chief Customs-authority".

arrival and re-warehousing of such goods at the port of destination within such time as such [1][officer] directs.

Goods on arrival at port of destination to be subject to same laws as goods on first importation.

108. Upon the arrival of warehoused goods at the port of destination, they shall be entered and warehoused in like manner as goods are entered and warehoused on the first importation thereof, and under the laws and rules, in so far as such laws and rules are applicable, which regulate the entry and warehousing of such last-mentioned goods.

Bond under section 92 to continue in force notwithstanding removal.

109. Every bond executed under section 92 in respect of any goods shall, unless the Chief Officer of Customs in any case deems a fresh bond to be necessary, continue in force, notwithstanding the subsequent removal of such goods to another warehouse or warehousing port.

Clearance for Home Consumption or Shipment.

Clearance of bonded goods for home consumption.

110. Any owner of goods warehoused may, at any time within three years from the date of the bond executed under section 92 in respect of such goods, clear such goods for home consumption by paying (*a*) the duty assessed on such goods under section 87, or, where the duty on such goods is altered under the provisions hereinafter contained, such altered duty; and (*b*) all rent, penalties, interest and other charges payable to the Customs-collector in respect of such goods.

Clearance of same for shipment to foreign port.

111. Any owner of goods warehoused may, at any time within three years from the date of the bond executed under section 92 in respect of such goods, clear such goods for shipment to a foreign port on payment of all rent, penalties, interest and other charges payable as aforesaid and without payment of import-duty on the same:

Provided that the [2][Central Government] may prohibit the shipment for exportation to any specified foreign port of warehoused goods in respect of which payment of drawback or transhipment has been prohibited under section 49 or 134 respectively.

Clearance of same for shipment as provisions, etc., on vessel proceeding to foreign ports.

112. Provisions and stores warehoused at the time of importation may, within the said period of three years, be shipped without payment of duty for use on board of any vessel proceeding to a foreign port.

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[1] Subs. by the Decentralization Act, 1914 (4 of 1914), s. 2 and Sch., Pt. I, for "authority".

[2] Subs. by the A. O. 1937 for "G. G. in C.".

(*Chapter XI,—Warehousing.*)

113. Application to clear goods from any warehouse for home consumption or for shipment shall be made in such form as the [1][Chief Customs-officer] from time to time prescribes. Form of application for clearance of goods.

Such application shall ordinarily be made to the Customs-collector at least twenty-four hours before it is intended so to clear such goods. Application when to be made.

114. If any goods upon which duties are leviable *ad valorem* or on a tariff valuation receive damage through unavoidable accident after they have been entered for warehousing and assessed under section 87, and before they are cleared for home consumption, they shall, if the owner so desires, be re-assessed for duty according to their actual value, and a new bond for the same may, at the option, of the owner, be executed for the unexpired term of warehousing. Re-assessment of warehoused goods when damaged.

115. If, after any goods entered for warehousing have been assessed under section 87, any alteration is made in the duty leviable upon such goods or in the tariff valuation (if any) applicable thereto, such goods shall be re-assessed in accordance with [2][such alteration]. Re-assessment on alteration of duty or tariff valuation.

116. If it appear at the time of clearing any wine, spirit, beer or salt from any warehouse for home consumption that there exists a deficiency not otherwise accounted for to the satisfaction of the Customs-collector, an allowance on account of ullage and wastage shall be made in adjusting the duties thereon, as follows (namely) :— Allowance in case of wine, spirit, beer or salt.

(*a*) upon wine, spirit and beer in cask to an extent not exceeding the rates specified below, or such other rates as may, from time to time, be prescribed in this behalf by the [3][Chief Customs-authority] and notified in the Official Gazette·

For any time not exceeding	6 months.	2½ per cent.
exceeding 6 months and not exceeding	12 „	5 „
„ 12 „ „	18 „	7½ „
„ 18 „ „	2 years	10 „
„ 2 years „	3 „	12 „

[1] Subs. by the Decentralization Act, 1914 (4 of 1914), s. 2 and Sch., Pt. I, for "Chief Customs-authority".

[2] Subs. by the Sea Customs Act (1878) Amendment Act, 1889 (8 of 1889), s. 2, for "the second proviso to s. 37".

[3] Subs. by the Decentralization Act, 1914 (4 of 1914), s. 2 and Sch., Pt. I, for "L. G."

(*b*) in the case of salt warehoused in a public warehouse, only the amount actually cleared shall be charged with customs-duties:

(*c*) in the case of salt warehoused in a private warehouse, wastage shall be allowed at such rate as may be prescribed from time to time by the [1][Chief Customs-authority] and notified in the [2]* Official Gazette.

Further special allowance.

117. When any wine, spirit, bear or salt lodged in a warehouse is found to be deficient at the time of the delivery therefrom, and such deficiency is proved to be due solely to ullage or wastage, the [3][Chief Customs-officer] may direct, in respect of any such article, that allowance be made in any special case for a rate of ullage or wastage exceeding that contemplated in section 116.

Of the Forfeiture and Discharge of the Bond.

If goods are improperly removed from warehouses or allowed to remain beyond time fixed or lost or destroyed, or taken as samples, Collector may demand duty, etc.

118. If any warehoused goods are removed from the warehouse in contravention of section 102; or

if any such goods have not been removed from the warehouse at the expiration of the time during which such goods are permitted by section 103 to remain in such warehouse; or

if any goods in respect of which a bond has been executed under section 92, and which have not been cleared for home consumption or shipment, or removed under this Act, are lost or destroyed otherwise than as provided in section 100 or as mentioned in section 122, or are not accounted for to the satisfaction of the Customs-collector; or

if any such goods have been taken under section 100 as samples without payment of duty,

the Customs-collector may thereupon demand, and the owner of such goods shall forthwith pay, the full amount of duty chargeable on account of such goods, together with all rent, penalties, interest and other charges payable to the Customs-collector on account of the same.

Procedure on failure to pay duty, etc.

119. If any owner fails to pay any sum so demanded, the Customs-collector may forthwith either proceed upon the bond executed under section 92, or cause such portion as he thinks fit of the goods (if any) in the warehouse on account of which the amount is due, to be detained with a view to the recovery of the demand;

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[1] Subs. by the Decentralization Act, 1914 (4 of 1914), s. 2 and Sch., Pt. I, for "L. G.".

[2] The word "local" rep. by the Central Board of Revenue Act, 1924 (4 of 1924), s. 4 and Sch.

[3] Subs. by Act 4 of 1914, s. 2 and Sch., Pt. I, for "Chief Customs-authority".

and if the demand be not discharged within ten days from the date of such detention (due notice thereof being given to the owner), the goods so detained may be sold by public auction duly advertised in the [1][Official Gazette].

The net proceeds of any sale so made of goods so detained shall be written off upon the bond in discharge thereof to the amount received, and if any surplus be obtained from such sale, beyond the amount of the demand, such surplus shall be paid to the owner of the goods : Provided that application for the same be made within one year from the sale, or that sufficient cause be shown for not making the application within such period.

No transfer or assignment of the goods shall prevent the Customs-collector from proceeding against such goods in the manner above provided, for any amount due thereon.

Noting removal of goods.

120. When any warehoused goods are taken out of any warehouse, the Customs-collector shall cause the fact to be noted on the back of the bond.

Every note so made shall specify the quantity and description of such goods, the purposes for which they have been removed, the date of removal, the name of the person removing them, the number and date of the shipping bill under which they have been taken away if removed for exportation by sea or of the bill of entry if removed for home consumption and the amount of duty paid (if any).

Register of bonds.

121. A register shall be kept of all bonds entered into for customs-duties on warehoused goods, and entry shall be made in such register of all particulars required by section 120 to be specified.

Cancellation and return of bonds.

When such register shows that the whole of the goods covered by any bond have been cleared for home consumption or shipment, or otherwise duly accounted for, and when all amounts due on account of such goods have been paid, the Customs-collector shall cancel such bond as discharged in full, and shall on demand deliver it, so cancelled, to the person who has executed or who is entitled to receive it.

Miscellaneous.

Power to remit duties on warehoused goods lost or destroyed.

122. If any goods in respect of which a bond has been executed under section 92 and which have not been cleared for home consumption are

[1] Subs. by the A. O. 1937 for "local official Gazette".

lost or destroyed by unavoidable accident or delay, the [1][Chief Customs-officer] may in [2][his] discretion remit the duties due thereon:

Provided that, if any such goods be so lost or destroyed in a private warehouse, notice thereof be given to the Customs-collector within forty-eight hours after the discovery of such loss or destruction.

Responsibility of warehouse-keeper.

123. The warehouse-keeper in respect of goods lodged in a public warehouse, and the licensee in respect of goods lodged in a private warehouse, shall be responsible for their due reception therein and delivery therefrom, and for their safe custody while deposited therein, according to the quantity, weight or gauge reported by the Custom-house-officer who has assessed such goods, allowance being made, if necessary, for ullage and wastage as provided in sections 116 and 117:

Compensation for loss or injury.

Provided that no owner of goods shall be entitled to claim from the Customs-collector, or from any keeper of a public warehouse, compensation for any loss or damage occurring to such goods while they are being passed into or out of such warehouse, or while they remain therein, unless it be proved that such loss or damage was occasioned by the wilful act or neglect of the warehouse-keeper or of an officer of Customs.

Public warehouse to be locked.

124. Every public warehouse shall be under the lock and key of a warehouse-keeper appointed by the Chief Officer of Customs.

Power to decide where goods may be deposited in public warehouse, and on what terms.

125. The [3][Chief Customs-officer] may from time to time determine in what division of any public warehouse, and in what manner, and on what terms, any goods may be deposited, and what sort of goods may be deposited in any such warehouse.

Expenses of carriage, packing, etc., to be borne by owners.

126. The expenses of carriage, packing and stowage of goods on their reception into or removal from a public warehouse shall, if paid by the Customs-collector or by the warehouse-keeper, be chargeable on the goods and be defrayed by, and recoverable from, the owner, in the manner provided in section 119.

Bengal Bonded Warehouse Association.

127. All the provisions of this Act relating to private warehouses shall be applicable to the warehouses wherein the Bengal Bonded Warehouse Association receives bonded goods.

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[1] Subs. by the Decentralization Act, 1914 (4 of 1914), s. 2 and Sch., Pt. I, for "Chief Customs-authority".

[2] Subs. by s. 2 and Sch., Pt. I, *ibid*, for "its".

[3] Subs. by s. 2 and Sch., Pt. I, *ibid*, for "Chief Customs-authority or such officer of Customs as such authority from time to time appoints in this behalf".

CHAPTER XII.

(*Chapter XII.—Transhipment.*)

TRANSHIPMENT.

128. In the ports of Calcutta, Madras, Bombay, Karwar, [1]* * * * and such other ports as the [2][Chief Customs-authority] may from time to time, by notification in the [3][4* Official Gazette] direct[5] in this behalf, the Customs-collector may, on application by the owner of any goods imported into such port, and specially and distinctly manifested at the time of importation as for transhipment to some other customs or foreign port, grant leave to tranship the same without payment of the duty (if any) leviable at the port of transhipment, and without any security or bond for the due arrival and entry of the goods at the port of destination. **Power to permit transhipment without payment of duty.**

In any customs-port other than a port in which the preceding clause may for the time being be in force, the Customs-collector may, on application by the owner of any goods so imported and manifested, grant leave for transhipment without payment of the duty (if any) leviable at such port: Provided that, where the goods so transhipped are dutiable, and are to be removed to some other customs-port, the applicant shall enter into a bond, with such security as may be required of him, in a sum equal at least to the duty chargeable on such goods, for the due arrival and entry thereof at the port of destination within such time as such Customs-collector directs.

129. An officer of Customs shall, in every case, be deputed free of charge to superintend the removal of transhipped goods from vessel to vessel. **Superintendence of transhipment.**

130. The powers conferred on the Customs-collector by section 128 shall be exercised, and the transhipment shall be performed, subject to such rules as may from time to time be made by the [6][Chief Customs-authority]. **Subsidiary rules as to transhipment.**

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[1] The names "Aden, Rangoon, Moulmain, Akyab" rep. by the A. O. 1937, and "Karachi", "Chittagong" rep. by the A. O. 1950.

[2] Subs. by the Central Board of Revenue Act, 1924, (4 of 1924), s. 4 and Sch., for "L. G.".

[3] Subs. by the Decentralization Act, 1914 (4 of 1914), s. 2 and Sch., Pt. I, for "Gazette of India".

[4] The word "local" rep. by Act 4 of 1924, s. 4 and Sch.

[5] For notification adding Negapatam to the above list of ports, *see* Gazette of India, 1901, p. 31.

[6] Subs. by the Decentralization Act, 1914 (4 of 1914), s. 2 and Sch., Pt. I, for "L. G".

No rules made under this section shall come into force until after the expiry of such reasonable time from the date of the publication of the same as the [1][Chief Customs-authority] may in each case appoint in this behalf.

Entry and warehousing on arrival of goods transhipped under section 128, clause 2.

131. All goods transhipped under the second clause of section 128 for removal to a customs-port shall, on their arrival at such port, be entered in like manner as goods are entered on the first importation thereof, and under the laws and rules, in so far as such laws and rules can be made applicable, which regulate the entry of such last-mentioned goods.

Transhipment of provisions and stores from one vessel to another of same owner without payment of duty.

132. If two or more vessels belonging wholly or in part to the same owner be at any customs-port at the same time, any provisions and stores in use or ordinarily shipped for use on board may, at the discretion of the Customs-collector, be transhipped from one such vessel to any other such vessel without payment of import-duty.

Levy of transhipment-fee.

133. A transhipment-fee on any goods or class of goods transhipped under this Act may be levied at such rates, on each bale or package, or according to weight, measurement, quantity or number, and under such rules, as [2][the Chief Customs-authority] may from time to time, by notification in the [3]* Official Gazette, prescribe for each port.

Power to prohibit transhipment.

134. The [4][Central Government] may from time to time, by notification in the [5][Official Gazette], prohibit at any specified port, or at all ports, the transhipment of any specified class of goods, generally or when destined for any specified ports, or prescribe any special mode of transhipping any specified class of goods.

No goods to be transhipped except as provided.

135. Except as provided in this Act, no goods shall be transhipped at any port or place in [6][the States].

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[1] Subs. by the Decentralization Act, 1914 (4 of 1914), s. 2 and Sch., Pt. I, for "L. G".

[2] Subs. by the Central Board of Revenue Act, 1924 (4 of 1924), s. 4 and Sch.. for "the L. G" subject to the control of the G. G. in C.

[3] The word "local' rep. by s. 4 and Sch., *ibid.*

[4] Subs. by the A. O. 1937 for "G. G. in C.".

[5] Subs. by the A. O. 1937 for "Gazette of India".

[6] Subs. by the A. O. 1950 for "the Provinces" which had been subs. by the A. O. 1948 for "British India".

(*Chapter XIII.—Exportation or Shipment and Re-landing.*)

CHAPTER XIII.

EXPORTATION OR SHIPMENT AND RE-LANDING.

136. Except with the written permission of the Customs-collector, no goods other than passengers' baggage, or ballast urgently required for a vessel's safety, shall be shipped or water-borne to be shipped in any vessel in a customs-port until an order has been obtained under section 61 for entry outwards of such vessel. **No goods to be shipped, etc., till entry outwards of vessel.**

When such order has been obtained, the export-cargo of such vessel may be shipped, subject to the provisions next hereinafter contained.

137. [1]* * * * No goods, except passengers' baggage, shall be shipped or water-borne to be shipped for exportation until— **Clearance for shipment.**

(*a*) the owner has delivered to the Customs-collector, or other proper officer, a shipping bill of such goods in duplicate, in such form and containing such particulars in addition to those specified in section 29 as may from time to time be prescribed by the [2][Chief Customs-officer];

(*b*) such owner has paid the duties (if any) payable on such goods; and

(*c*) such bill has been passed by the Customs-collector:

[3][Provided that the Chief Customs-officer may, in the case of any customs-port or wharf, by notification in the [4][Official Gazette], and subject to such restrictions and conditions, if any, as he thinks fit, exempt goods or any specified goods or class of goods or any specified person or class of persons, from all or any of the provisions of this section.]

138. [1]Before any warehoused goods or goods subject to excise-duties, or goods entitled to drawback of customs-duties on exportation or goods exportable only under particular rules or restrictions, are permitted to be **Bond required in certain cases before exportation.**

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[1] The words "Unless the Chief Customs-officer shall, in the case of any customs-port or wharf, or of any class of goods, otherwise direct by notification in the local official Gazette" were rep. by the Sea Customs (Amendment) Act, 1914 (12 of 1914), s. 5 (*1*).

[2] Subs. by the Decentralization Act, 1914 (4 of 1914), s. 2 and Sch., Pt. I, for "Chief Customs-authority".

[3] Ins. by the Sea Customs (Amendment) Act, 1914 (12 of 1914), s. 5 (2).

[4] Subs. by the A. O. 1937 for "local official Gazette".

exported, the owner shall, if required so to do, give security by bond in such sum, not exceeding twice the duty leviable on such goods, as the Customs-Collector directs, with one sufficient surety, that such goods shall be duly shipped, exported and landed at the place for which they are entered outwards, or shall be otherwise accounted for to the satisfaction of such officer.

Additional charge on goods cleared for shipment after port-clearance granted.

139. When goods are cleared for shipment on a shipping bill presented after port-clearance has been granted, the Customs-collector may, if he thinks fit, levy, in addition to any duty to which such goods are ordinarily liable, a charge not exceeding—

(*a*) in the case of goods liable to duties on fixed tariff-valuations, one per cent. on the tariff-value;

(*b*) in the case of all other goods, one per cent. on the market-value.

Nothing in this section shall apply to any shipment of treasure or opium.

Notice of non shipment or re-landing, and return of duty thereon.

140. If any goods mentioned in a shipping bill or manifest be not shipped, or be shipped and afterwards re-landed, the owner shall, before the expiration of five clear working days after the vessel on which such goods were intended to be shipped, or from which they were re-landed, has left the port, give information of such short-shipment or re-landing to the Customs-collector.

Upon an application being made to the Customs-collector, any duty levied upon goods not shipped, or upon goods shipped and afterwards re-landed, shall be refunded to the person on whose behalf such duty was paid: Provided that no such refund shall be allowed unless information has been given as above required.

Goods re-landed or transhipped from a vessel returning to port, or putting into another port

141. If, after having cleared from any customs-port, any vessel, without having discharged her cargo, returns to such port, or puts into any other customs-port, any owner of goods in such vessel, if he desires to land or tranship the same or any portion thereof for re-export, may, with the consent of the master, apply to the Customs-collector in that behalf.

The Customs-collector, if he grant the application, shall thereupon send an officer of Customs to watch the vessel, and to take charge of such goods during such re-landing or transhipment.

Such goods shall not be allowed to be transhipped or re-exported free of duty by reason of the previous settlement of duty at the time of first export, unless they are lodged and remain, until the time of re-export, under the custody of an officer of Customs, in a place appointed by the Customs-collector, or are transhipped under such custody.

(Chapter XIII.—Exportation or Shipment and Re-landing. Chapter XIV.—Spirit.)

All expenses attending such custody shall be borne by the owner.

142. In either of the cases mentioned in section 141, the master of the vessel may enter such vessel inwards, and any owner of goods therein may, with the consent of the master, land the same under the rules herein contained for the importation of goods.

Vessel returning to port may enter and land goods under import-rules.

In every such case, any export-duty levied shall be refunded to, and any amount paid in drawback shall be recovered from, such owner.

143. The Customs-collector may, on application by the master of any vessel which is obliged before completing her voyage to put into any customs-port for repairs, permit him to land the cargo, or any portion thereof, and to place it in the custody of an officer of Customs during such repairs, and to re-ship and export the same free of duty.

Landing of cargo during repairs.

All expenses attending such custody shall be borne by the master.

CHAPTER XIV.

SPIRIT.

Exportation of Spirit under Bond for Excise-duty.

144. The Chief Customs-authority may from time to time make rules prescribing the conditions on which spirit manufactured in [1]~~[the State]~~ may be removed from any licensed distillery for exportation without payment of excise-duty.

Rules for removal of spirit from distillery without payment of duty for exportation.

The person so removing any such spirit shall execute a bond with one or more sureties, in the form marked C hereto annexed, or (when such form is inapplicable or insufficient) in such other form as the said Authority from time to time prescribes, conditioned that such duty shall be paid on all such spirit as is—

(*a*) not exported within four months from the date of the bond, or

(*b*) exported to a customs-port, unless [2][either] the payment of excise-duty as provided by this Chapter in respect thereof at the port of destination [2][or the delivery of the spirit into a ware-

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[1] Subs. by the A. O. 1950 for "a Province" which had been Subs. by the A. O. 1948 for "British India".

[2] Ins. by the Sea Customs Act (1878) Amendment Act, 1887 (2 of 1887), s. 1 (*1*).

house appointed in this behalf by the [1][Chief Customs-authority] having authority at that port] is within six months from the date of the bond proved to the satisfaction of the proper officer.

The Chief Officer of Customs of the port of exportation may, on sufficient cause shown, extend for a further term not exceeding four months the period allowed for the exportation of any such spirit, or for the production of such proof that duty has been [2][so paid or the spirit so delivered].

145. Spirit intended for exportation under bond for the excise-duty shall [3][except when provision is made by any enactment for the time being in force for its being intermediately deposited in a licensed warehouse] be taken from the distillery direct to the custom-house, under passes to be granted for that purpose by the officers of Excise.

Spirit for export to be taken direct from distillery to Custom-house under pass.

146. Spirit brought to the custom-house for exportation under bond for the excise-duty [4][may], previous to shipment, be gauged and proved by an officer of Customs, and the quantity of spirit for which credit is to be given in the settlement of any bond [4][may] be determined in the same manner.

Gauging and proving of spirit.

147. Excise duty, shall be recoverable previous to shipment upon the excess (if any) of the quantity of spirit passed from a distillery over the quantity ascertained by gauge and proof at the custom-house, less an allowance for ullage and wastage at such rates as are from time to time prescribed by the [1][Chief Customs-authority] and notified in the [5]* Official Gagette.

Duty to be recovered on any deficiency in spirit under bond.

XI of 1882

148. [6][Notwithstanding anything in the [7]Indian Tariff Act, 1882,] spirit exported under bond for excise-duty from any customs-port to any other customs-port shall be charged at the port of importation with excise-duty at the ordinary rate to which the spirit of the like kind and strength is liable at such port:

Duty on spirit-exported under bond from one Indian port to another.

[8][Provided that the [1][Chief Customs-authority] may authorize the import of such spirit without the payment of that duty at the port of impor-

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[1] Subs. by the Decentralization Act, 1914 (4 of 1914), s. 2 and Sch., Pt. I, for "L. G".

[2] Subs. by the Sea Customs Act (1878) Amendment Act, 1887 (2 of 1887), s. 1 (2) for "paid".

[3] Ins. by the Excise and Sea Customs Law Amendment Act, 1885 (9 of 1885).

[4] Subs. by Act 2 of 1887, s. 2, for "shall".

[5] The word "local" rep. by the Central Board of Revenue Act, 1924 (4 of 1924), s. 4 and Sch.

[6] Ins. by Act 2 of 1887, s. 3 (*1*).

[7] *See* now the Indian Tariff Act, 1934 (32 of 1934).

[8] Ins. by Act 2 of 1887, s. 3 (*2*).

tation when the spirit is to be delivered into a warehouse appointed by the [1][Chief Customs-authority] in this behalf, and the excise-duty thereon is to be paid on the removal of the spirit from a warehouse so appointed.]

149. Spirit brought to the custom-house [2][or to a warehouse licensed under any enactment for the time being in force] for exportation under bond for the excise-duty may, on payment of such duty, be removed for local consumption under passes to be granted for that purpose by the officers of Excise.

Removal for local consumption of spirit intended for exportation.

Credit for every such payment shall be given in discharge of the bond to which it relates.

Drawback of Excise-duty on Export of Spirit.

[3]150. A drawback of excise-duty paid on spirit manufactured in [4]~~[the States]~~ and exported to any foreign port under the provisions of section 138 shall be allowed by the Customs-collector at the port of exportation:

Drawback of excise duty on spirit exported.

Provided that the exportation be made within one year from the date of payment of such excise-duty, and that the spirit, when brought to the custom-house, be accompanied by a pass in which such payment is certified.

Such drawback shall be regulated by the strength and quantity of such spirit as ascertained by gauge and proof by an officer of Customs.

Miscellaneous.

XI of 1882.

151. [5][Notwithstanding anything in the [6]Indian Tariff Act, 1882,] if spirit manufactured in [4]~~[the States]~~ upon which excise-duty has been paid is exported from one customs-port to another, and the rate of local excise-duty at the port of importation is higher than that already paid upon such spirit, a differential duty shall be charged thereon, at such rate [7][(not exceeding the difference between the two rates)] as the [8][State Government] at such port may, by notification in the [9][Official Gazette], from time to time prescribe:

Differential duty to be levied in certain cases.

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[1] Subs. by the Decentralization Act, 1914 (4 of 1914), s. 2 and Sch., Pt. I, for "L. G.".

[2] Ins. by the Excise and Sea Customs Law Amendment Act, 1885 (9 of 1885), s. 5 (2).

[3] As to the application of the provisions of s. 150 to malt liquor, *see* the Excise (Malt Liquors) Act, 1890 (13 of 1890), s. 9.

[4] Subs. by the A. O. 1950 for "a Province" which had been subs. by the A. O. 1948 for "British India".

[5] Ins. by the Sea Customs Act (1878) Amendment Act, 1887 (2 of 1887), s. 4 (1).

[6] *See* now the Indian Tariff Act, 1934 (32 of 1934).

[7] Ins. by the A. O. 1937. *Cf.* the G. of I. Act, 1935 (26 Geo. 5, ch. 2), 7th Sch., List II, entry 40.

[8] Subs. by the A. O. 1950 for "Provincial Government" which had been Subs. by the A. O. 1937 for "L. G.".

[9] Subs. by the A. O. 1937 for "local official Gazette".

[1][Provided that the [2][Chief Customs-authority] may authorize the import of such spirit without the payment of the differential duty at the port of importation when the spirit is to be delivered into a warehouse appointed by the [2][Chief Customs-authority] in this behalf, and the differential duty is to be paid on the removal of the spirit from a warehouse so appointed.]

Rum-shrub, etc., how charged with duty.

152. Rum-shrub, cordial and other such liquor prepared in a licensed distillery under the supervision of the surveyor or officer in charge of the distillery shall be charged with excise-duty under this Act according to the quantity of spirit used in its preparation as ascertained by such surveyor or officer.

Provisions respecting spirit applied to such liquors.

The provisions of this Act respecting spirit, except such as relate to gauge and proof, shall apply to such liquor.

Conditions of drawback and remission of duty on spirit.

153. No drawback shall be allowed for any spirit on which duty has been paid, nor shall the duty due on any spirit under bond be remitted, unless the spirit is shipped from the custom-house, and in a vessel whereon an officer of Customs has been appointed to superintend the receipt of export-cargo.

Re-land of spirit shipped.

154. No spirit shipped for exportation shall be relanded without a special pass from an officer of Excise, in addition to any permission of an officer of Customs which may be required by the law for the time being in force.

Power to make rules for ascertaining that imported spirit has been rendered unfit for human consumption.

155. [3][When by any law for the time being in force, a special duty is imposed on denatured spirit, [4][the Central Government] may [5]* * * * * * make rules for ascertaining and determining what spirit imported into [6][the States] shall be deemed to be denatured spirit for the purposes of such law, and for causing such spirit to be denatured, if necessary, [7][by officers of Government] at the expense of the person importing the same, before the customs-duties leviable thereon are levied.]

Decision where no rules, or their applicability disputed.

In the absence of any such rules, or if any dispute arises as to their applicability, the Chief Customs-officer shall decide what spirit is subject only to the said special duty, and such decision shall be final.

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[1] Ins. by the Sea Customs Act (1878) Amendment Act, 1887 (2 of 1887), s. 4 (2).

[2] Subs. by the Decentralization Act, 1914 (4 of 1914), s. 2 and Sch., Pt. I, for "L. G.".

[3] Subs. by the Sea Customs (Amendment) Act, 1914 (12 of 1914), s. 6, for the original paragraph.

[4] Subs. by the A. O. 1937 for "the L. G.".

[5] The words "with the previous sanction of the G. G. in C.", ins. by the Central Board of Revenue Act, 1924 (4 of 1924), s. 4 and Sch., were rep. by the A. O. 1937.

[6] Subs. by the A. O. 1950 for "the Provinces" which had been subs. by the A. O. 1948 for "British India".

[7] Subs. by Act 4 of 1924, s. 4 and Sch., for "by its own officers".

CHAPTER XV.

COASTING-TRADE.

156. Except as hereinafter provided, nothing in Chapters VII, IX, X and sections 136, 139, and 141 to 143 inclusive, of this Act, shall apply to coasting-vessels or to goods imported or exported in such vessels.

Chapters VII, IX, X and part of XIII inapplicable to coasting trade.

157. [1][The Central Government] may, from time to time, make rules consistent with the provisions of this Chapter—

Power to regulate coasting-trade.

(*a*) extending any provision of the Chapters and sections mentioned in section 156, with or without modification, to any coasting vessels or to any goods imported or exported in such vessels;

(*b*) exempting any such vessels or goods from any of the other provisions of this Act except those contained in this Chapter;

(*c*) prescribing the conditions on which goods, or any specified class of goods, may be (1) carried in a coasting-vessel, whether shipped at a foreign port, or at a customs-port, or at a place declared under section 12 to be a port; (2) shipped in a coasting-vessel before all dutiable goods and goods brought in such vessel from a foreign port have been unladen;

(*d*) prohibiting the conveyance of any specified class of goods generally, or to or between specified ports in a coasting vessel.

158. Before any coasting-vessel departs from the port of lading, or, when there are more ports of lading than one, the first port of lading, the master shall fill in, sign and deliver to the Customs-collector a manifest in duplicate, containing a true specification of all goods to be carried in such vessel, in such form, and accompanied by such shipping bills or other documents, as may from time to time be prescribed by the Chief Customs-authority.

Coasting-vessels to deliver manifest and obtain port-clearance before leaving port of lading.

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[1] Subs. by the A. O. 1937 for "The G. G. in C." which had been subs. for "The L. G." by the Central Board of Revenue Act, 1924 (4 of 1924), s. 4 and Sch.

If the Customs-collector sees no objection to the departure of the vessel, he shall retain the duplicate and return the original manifest, dated and signed by him, together with its accompaniments; and such manifest shall be the port-clearance of the vessel, unless, under the general orders of the Chief Customs-authority, a separate port-clearance be prescribed.

Delivery of manifest, etc., on arrival.

159. Within twenty-four hours after the arrival of any coasting vessel at any customs-port, whether intermediate or final, and before any goods are there discharged, the manifest, together with the other documents referred to in section 158, shall be delivered to the Customs collector, who shall note on the manifest the date of delivery.

If the vessel has touched at any foreign port between such port of arrival and her last preceding custom-port of departure, the master shall append to the manifest a declaration to that effect, and shall also indicate on the manifest the portions (if any) of the cargo therein described which have been discharged, and subjoin thereto a true specification of all goods shipped at such port.

If the customs-port of arrival be an intermediate port, and a portion only of the cargo is to be discharged thereat, the master shall likewise so deliver an extract from the manifest signed by him, relating to such portion, and the Customs-collector shall, after verifying such extract, return to him the original manifest and all documents accompanying it except those relating to such portion.

If in any case the cargo actually on board any coasting-vessel on her arrival at any customs-port does not, owing to short-shipment, re-landing or other cause, correspond with the specification thereof in the manifest returned to the master under the second clause of section 158, such master shall, before delivery of such manifest under this section, note thereon the particulars of the difference.

The Customs-collector, when satisfied with the manifest and other documents shall grant an order to break bulk.

Departure from intermediate port.

160. Before any coasting-vessel departs from any customs-port at which she has touched during her voyage, the master shall re-deliver the original manifest to the Customs-collector, after indicating thereon the portions (if any) of the cargo therein described which have been discharged, and subjoining thereto a true specification of all goods shipped at such port. He shall also deliver a duplicate, signed by him, of the specification so subjoined.

If the Customs-collector sees no objection to the departure of the vessel, he shall proceed as prescribed in the second clause of section 158.

(*Chapter XV.—Coasting-trade.*)

161. The Customs-collector may, for sufficient reason, refuse port-clearance to any coasting-vessel declared to be bound to, or about to touch at, any customs-port, unless the owner or master gives a bond, with such security as the Customs-collector deems sufficient, for the production to the Customs-collector of a certificate from the proper officer of the port to which such vessel is said to be bound, of her arrival at such port within a reasonable time to be prescribed in each case by the Customs-collector.

Power to require bond before port-clearance is granted.

162. When permission has been granted by the Customs-collector for the discharge of cargo from any coasting-vessel—

Discharge of cargo.

(*a*) if the vessel has not touched at any intermediate foreign port in the course of her voyage, and has not on board any dutiable goods, the cargo may be forthwith landed and removed by the owner without entry thereof at the custom-house and clearance for home consumption, but subject to such general check and control as the [1][Chief Customs-officer] may from time to time by rules prescribe;

(*b*) if the vessel has so touched at any such port or has on board any such goods, such vessel shall be subject to all the provisions of Chapter VII of this Act relating to vessels arriving and such goods, and until such goods have been duly discharged all other goods on board shall be subject to the provisions of Chapter IX of this Act relating to goods imported.

163. If any of the goods on board of any coasting-vessel be subject to any excise-duty they shall not be unladen without the permission of the proper officer of Excise.

Goods on coasting-vessel, if excisable, not to be unladen without permission.

164. Notwithstanding anything hereinbefore contained, [2][the Chief Customs-officer may grant or] authorize the Customs-collector to grant a general pass, on any conditions which [3][the Chief Customs-officer] thinks expedient for the lading and clearance, and for the entry and unlading, of any coasting steam-vessel at any ports of despatch or destination, or at any intermediate ports at which she touches for the purpose of receiving goods or passengers.

Grant and revocation of general pass.

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[1] Subs. by the Decentralization Act, 1914 (4 of 1914), s. 2 and Sch., Pt. I, for "Chief Customs-authority".

[2] Subs. by s. 2 and Sch., Pt. I, *ibid.*, for "the Chief Customs-authority may".

[3] Subs. by s. 2 and Sch., Pt. I, *ibid.*, for "such authority".

Such pass shall be valid throughout [1][the States], or for such ports only as may be specified therein.

Any such general pass may be revoked by order of [2][the Chief Customs-officer] by whom the grant thereof [3][was made or authorized] by notice in writing under the hand of [4][the Chief-Customs-officer] delivered to the master or to the owner of such steam-vessel, or to any of the crew on board.

Rules respecting cargo books to be kept by masters of coasting-vessels.

165. The Chief Customs-authority may direct that the master of any coasting-vessel which is square-rigged or propelled by steam shall keep, or cause to be kept, a cargo-book, stating the name of the master, the vessel, the port to which she belongs, and the port to which on each voyage she is bound.

At every port of lading such master shall enter, or cause to be entered, in such book the name of such port and an account of all goods there taken on board of such vessel, with a description of the packages, and the quantities and descriptions of the goods, contained therein or stowed loose, and the names of the respective shippers and consignees, in so far as such particulars are known to him.

At every port of discharge of any such goods such master shall enter, or cause to be entered, in such books the respective days on which such goods or any of them are delivered out of such vessel.

The respective times of departure from every port of lading, and of arrival at every port of discharge, shall in like manner be duly entered.

Every such master shall, on demand, produce his cargo-book for the inspection of any officer of Customs, and such officer shall be at liberty to make any note or remark therein.

The Chief Customs-authority may, in the case of any vessel the master whereof has been directed to keep a cargo-book under this section, dispense with the manifest required under sections 158, 159 and 160.

Power to board and examine coasting-vessels.

166. Any duly empowered officer of Customs may go on board o any coasting-vessel in any port or place in [1][The States], and may at any period of a voyage search any such vessel and examine all goods on board, and all goods then lading or unlading, and may demand the production of any document which ought to be on board of any such vessel.

The Customs-collector may further require that any such document belonging to any coasting-vessel then in port shall be brought to him for inspection.

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[1] Subs. by the A. O. 1950 for "the Provinces" which had been subs. by the A. O. 1948 for "British India".

[2] Subs. by the Decentralization Act, 1914 (4 of 1914), s. 2 and Sch., Pt. I, for "the Chief Customs-authority".

[3] Subs. by s. 2 and Sch., Pt. I, *ibid.*, for "was authorized".

[4] Subs. by s. 2 and Sch., Pt. I, *ibid.*, for "such authority".

(*Chapter XVI.—Offences and Penalties.*)

CHAPTER XVI.

OFFENCES AND PENALTIES.

167. The offences mentioned in the first column of the following schedule shall be punishable to the extent mentioned in the third column of the same with reference to such offences respectively:— Punishments for offences.

Offences.	Section of this Act to which offence has reference.	Penalties.
1.—Contravening any rule made under this Act.	General	Penalty not exceeding five hundred rupees.
2.—If any goods be landed or shipped, or if an attempt be made to land or ship any goods, or if any goods be brought into any bay, river, creek or arm of the sea, for the purpose of being landed or shipped, at any port or place which, at the date of such landing, shipment, attempt or bringing, is not a port for the landing and shipment of goods,	11	such goods shall be liable to confiscation.
3.—If any person ship or land goods or aid in the shipment or landing of goods, or knowingly keep or conceal, or knowingly permit or procure to be kept or concealed, any goods shipped or landed, or intended to be shipped or landed, contrary to the provisions of this Act; or	General	such person shall be liable to a penalty not exceeding one thousand rupees.
if any person be found to have been on board of any vessel liable to confiscation on account of the commission of an offence under [1][No. 4] of this section, while such vessel is within any bay, river, creek or arm of the sea which is not a port for the [2][shipment and landing] of goods.	11	
4.—If any vessel which has been within the limits of any port in [3][the States] with cargo on board, be afterwards found in any port, bay, river, creek or arm of the sea in [3][the States], light or in ballast, and if the master be unable to give a due account of the customs-port where such vessel lawfully discharged her cargo,	11	such vessel shal be liable to confiscation.
5.—If any goods are put without the authority of the proper officer of Customs, on board of any tug-steamer or pilot-vessel from any seagoing vessel inward-bound; or	11	such goods shall be liable to confiscation, and the master of every such tug-steamer or pilot-vessel shall be liable to a penalty not exceeding one thousand rupees.

[1] Subs. by the Amending Act, 1891 (12 of 1891), s. 2 (2), for "No. 3".
[2] Subs. by s. 2, *ibid.*, for "landing or shipment".
[3] *See* footnote 1 on prepage.

(Chapter XVI.—Offences and Penalties.)

Offences.	Section of this Act to which offence has reference.	Penalties.
if any goods are put, without such authority, out of any tug-steamer or pilot-vessel for the purpose of being put on board of any such vessel outward-bound ; or if any goods on which drawback has been granted are put, without such authority, on board of any tug-steamer or pilot-vessel for the purpose of being re-landed,		
6.—If any vessel arriving at, or departing from, any customs-port fails, when so required under section 17, to bring-to at any such station as has been appointed by the [1][Chief Customs-officer] for the boarding or landing of an officer of Customs,	17	the master of such vessel shall be liable to a penalty not exceeding one thousand rupees.
7.—If any vessel arriving at any customs-port, after having come to its proper place of mooring or unlading, removes from such place, except with the authority of the Conservator, obtained in accordance with the provisions of the Indian Ports Act, 1875[2], or other lawful authority, to some other place of mooring or unlading, or	..	the master of such vessel shall be liable to a penalty not exceeding five hundred rupees and the vessel, if not entered, shall not be allowed to enter until the penalty is paid.
if any vessel not brought into port by a pilot be not anchored or moored in accordance with any direction of the [1][Chief Customs-officer] under section 17,	17	
8.—If any goods, the importation or exportation of which is for the time being prohibited or restricted by or under Chapter IV of this Act, be imported into or exported from [3][the States] contrary to such prohibition or restriction, or if any attempt be made so to import or export any such goods, or if any such goods be found in any package produced to any officer of Customs as containing no such goods, or if any such goods, or any dutiable goods be found either before or after landing or shipment to have been concealed in any manner on board of any vessel within the limits of any port in [3][the States], or	18 & 19	such goods shall be liable to confiscation ; any person concerned in any such offence shall be liable to a penalty not exceeding three times the value of the goods, or not exceeding one thousand rupees.

[1] Subs. by the Decentralization Act, 1914 (4 of 1914), s. 2 and Sch., Pt. I, for "Chief Customs-authority".

[2] *See* now the Indian Ports Act, 1908 (15 of 1908).

[3] *See* footnote 1 on p. 454 *supra*.

(Chapter XVI.—Offences and Penalties.)

Offences.	Section of this Act to which offence has reference.	Penalties.
if any goods, the exportation of which is prohibited or restricted as aforesaid, be brought to any wharf in order to be put on board of any vessel for exportation contrary to such prohibition or restriction,		
9.—If, upon an application to pass any goods through the custom-house, any person not being the owner of such goods, and not having proper and sufficient authority from the owner, subscribes or attests any document relating to any goods on behalf of such owner,	General-	such person shall be liable to a penalty not exceeding one thousand rupees.
10.—If any goods, on the entry of which for re-export drawback has been paid, are not duly exported, or are unshipped or re-landed at any customs-port (not having been duly re-landed or discharged under the provisions of this Act),	42 & 43	such goods, together with any vessel used in so unshipping or re-landing them, shall be liable to confiscation ; and the master of the vessel from which such goods are so unshipped or re-landed, and any person by whom or by whose orders or means such goods are so unshipped or re-landed, or who aids or is concerned in such unshipping or re-landing, shall be liable to a penalty not exceeding three times the value of such goods or not exceeding one thousand rupees.
11.—If any wine, spirit, provisions or stores be not laden on board of the vessel on board of which they should, under the provisions of section 45, 46, 47 or 48, be laden, or be unladen from such vessel without the permission of the proper officer of Customs,	44 to 48	such wine, spirit, provisions or stores shall be liable to confiscation.
12.—If any goods be entered for drawback, which are of less value than the amount of the drawback claimed,	50	such goods shall be liable to confiscation.
13.—If, in any river or port wherein a place has been fixed under section 53 by the [1][Chief Customs-authority], any vessel arriving passes beyond such place, before delivery of a manifest to the pilot, officer of Customs, or other person duly authorized to receive the same,	53	the master of such vessel shall be liable to a penalty not exceeding one thousand rupees.

[1] Subs. by the Decentralization Act, 1914 (4 of 1914), s. 2 and Sch., Pt. I, for "L. G.".

(Chapter XVI.—Offences and Penalties.)

Offences.	Section of this Act to which offence has reference.	Penalties.
14.—If the master of any vessel arriving, which remains outside or below any place so fixed, wilfully omits, for the space of twenty-four hours after anchoring, to deliver a manifest as required by this Act,	53	such master shall be liable to a penalty not exceeding one thousand rupees.
15.—If, after any vessel arriving has entered any customs-port in which a place has not been fixed under section 53, the master of such vessel wilfully omits, for the space of twenty-four hours after anchoring, to deliver a manifest as required by this Act,	54	such master shall be liable to a penalty not exceeding one thousand rupees.
16.—If any manifest delivered under section 53, 54, 60, 63 or 66 is not signed by the person delivering the same and is not in the form or does not contain the particulars required by section 55 or 63, as the case may be, in so far as such particulars are applicable to the ship, cargo and voyage; or if any manifest so delivered does not contain a specification true to the best of such person's knowledge of all goods imported or to be exported in such vessel,	55 & 63	the person delivering such manifest shall be liable to a penalty not exceeding one thousand rupees.
17.—If any goods entered in the import-manifest of a vessel are not found on board of the vessel ; or if the quantity so found is short, and if such deficiency is not accounted for to the satisfaction of the officer in charge of the custom-house,	55 & 64	the master of such vessel shall be liable to a penalty not exceeding twice the amount of duty chargeable on the missing or deficient goods, if they be dutiable and the duty leviable thereon can be ascertained, or otherwise to a penalty not exceeding five hundred rupees for every missing or deficient package or separate article.
18.—If any person required by this Act to receive a manifest from any master of a vessel, refuses so to do, or fails to countersign the same or to enter thereon the particulars referred to in section 56.	53, 54 & 56	such person shall be liable to a penalty not exceeding five hundred rupees.
19.—If bulk be broken in any vessel previous to the grant by the Customs-collector of an order for entry inwards or a special pass permitting bulk to be broken,	57 & 59	the master of such vessel shall be liable to a penalty not exceeding one thousand rupees.

(Chapter XVI.—Offences and Penalties.)

Offences.	Section of this Act to which offence has reference.	Penalties.
20.—If any bill of lading or copy required under section 58 is false and the master is unable to satisfy the Customs collector that he was not aware of the fact; or if any such bill or copy has been altered with fraudulent intent; or if the goods mentioned in any such bill or copy have not been *bona fide* shipped as shown therein; or if any such bill of lading or any bill of lading of which a copy is delivered, has not been made previously to the departure of the vessel from the place where the goods referred to in such bill of lading were shipped; or if any part of the cargo has been staved, destroyed or thrown overboard; or if any package has been opened and such part of the cargo or such package be not accounted for to the satisfaction of the Customs-collector.	58	the master of the vessel shall be liable to a penalty not exceeding one thousand rupees.
21.—If any master of a vessel attempts to depart without a port-clearance,	62	such master shall be liable to a penalty not exceeding five hundred rupees.
22.—If any vessel actually departs without a port-clearance.	62	the master of such vessel shall be liable to a penalty not exceeding one thousand rupees.
23.—If any pilot takes charge of any vessel proceeding to sea, notwithstanding that the master of such vessel does not produce a port-clearance,	62	such pilot, on conviction before a Magistrate, shall be liable to fine not exceeding one thousand rupees.
24.—If any master of a vessel refuses to receive on board an officer of Customs deputed under section 67,	68	such master shall be liable to a penalty not exceeding five hundred rupees for each day during which such officer is not received on board, and the vessel if not entered, shall not be allowed to enter until such penalty is paid.
25.—If any master of a vessel refuses to receive on board one servant of such officer, or to provide such officer and servant with suitable shelter and accommodation, and with a due allowance of fresh water, and with the means of cooking on board,	68	such master shall, in each such case, be liable to a penalty not exceeding five hundred rupees.

(Chapter XVI.—Offences and Penalties.)

Offences.	Section of this Act to which offence has reference.	Penalties.
26.—If any master of a vessel refuses to allow such vessel, or any box, place or closed receptacle in such vessel, to be searched when so required by an officer of Customs bearing a written order to search; or if an officer of Customs places any lock, mark or seal upon any goods in a vessel, and such lock, mark or seal is wilfully opened, altered or broken, before due delivery of such goods; or if any such goods are secretly conveyed away; or if any hatchway or entrance to the hold of a vessel, after having been fastened down by an officer of Customs, is opened without his permission,	69	the master of such vessel shall be liable, upon conviction before a Magistrate, to a fine not exceeding one thousand rupees.
27.—If the master of any vessel laid up by the withdrawal of the officer of Customs shall, before application is made by him for an officer of Customs to superintend the receipt of cargo, cause or suffer to be put on board of such vessel any goods whatever, in contravention of section 70,	70	such master shall be liable to a penalty not exceeding one thousand rupees, and the goods, if protected by a pass, shall be liable to be re-landed for examination at the expense of the vessel, and, if not protected by a pass, shall be liable to confiscation.
28.—If any master of a vessel, in any case other than that provided for by No. 27, causes or suffers any goods to be discharged, shipped or water-borne contrary to any of the provisions of section 70, 72 or 75,	70, 72 & 75	such master shall be liable to a penalty not exceeding one thousand rupees; and all goods so discharged, shipped or water-borne shall be liable to confiscation.
29.—If, when a boat-note is required by section 76. any goods water-borne for the purpose of being landed from any vessel, and ware-housed or passed for importation, or of being shipped for exportation, be found without such note; or if any goods are found on board any boat in excess of such boat-note, whether such goods are intended to be landed from, or to be shipped on board of, any vessel,	76	such goods shall be liable to confiscation; and the person by whose authority the goods are being landed or shipped, and the person in charge of the boat, shall each be liable to a penalty not exceeding twice the amount of duty (if any) leviable on the said goods.

(Chapter XVI.—Offences and Penalties.)

Offences.	Section of this Act to which offence has reference.	Penalties.
30.—If any person refuses to receive, or fails to sign, or to note the prescribed particulars upon, any boat-note, as required by section 76, or if any master or officer of a vessel receiving the same fails to deliver it when required so to do by any officer of Customs authorized to make such requisition,	76	such person, master or officer shall be liable to a penalty not exceeding five hundred rupees.
31.—If any goods are, without permission, shipped or water-borne to be shipped, or are landed, except from or at a wharf or other place duly appointed for the purpose; or	73	such goods shall be liable to confiscation; and the person by whose authority the goods are shipped, landed, water-borne or transhipped, and the person in charge of the vessel employed in conveying them, shall each be liable to a penalty not exceeding twice the amount of the duty (if any) leviable on such goods.
if any goods water-borne for the purpose of being landed or shipped are not landed or shipped without unnecessary delay; or	77	
if the boat containing such goods be found out of the proper track between the vessel and the wharf or other proper place of landing or shipping, and such deviation be not accounted for to the satisfaction of the Customs-collector; or		
if any goods are transhipped contrary to the provisions of section 78,	78	
32.—If, after the issue of a notification under section 79 with regard to any port, any goods are found within the limits of such port on board of any boat not duly licensed and registered,	79	such goods, unless they are covered by a special permit from the Customs-collector shall be liable to confiscation, and the owner or the person in charge of the boat shall be liable to a penalty not exceeding one hundred rupees.
33.—If any master of a vessel discharges or suffers to be discharged any goods not duly entered in the manifest of such vessel,	55 & 82	such master shall be liable to a penalty not exceeding one thousand rupees.
34.—If any goods are found concealed in any place, box or closed receptacle in any vessel, and are not duly accounted for to the satisfaction of the officer in charge of the custom-house,	General	such goods shall be liable to confiscation.
35.—If any goods are found on board in excess of those entered in the manifest, or not corresponding with the specification therein contained,	55 & 82	such goods shall be liable to confiscation, or to be charged with such increased rates of duty as the Chief Officer of Customs directs.

(Chapter XVI.—Offences and Penalties.)

Offences.	Section of this Act to which offence has reference.	Penalties.
36.—If, after any goods have been landed and before they have been passed through the custom-house, the owner removes or attempts to remove them, with the intention of defrauding the revenue,	86 & 87	such goods shall be liable to confiscation; or if the goods cannot be recovered, the owner shall be liable, in addition to full duty, to a penalty not exceeding twice the amount of such duty, if the goods be dutiable and the duty leviable thereon can be ascertained; or otherwise to a penalty not exceeding one thousand rupees for every missing or deficient package or separate article.
37.—If it be found, when any goods are entered at, or brought to be passed through, a custom-house, either for importation or exportation, that — (*a*) the packages in which they are contained differ widely from the description given in the bill of entry or application for passing them ; or (*b*) the contents thereof have been wrongly described in such bill or application as regards the denominations, characters or conditions according to which such goods are chargeable with duty, or are being imported or exported; or (*c*) the contents of such packages have been mis-stated in regard to sort, quality, quantity or value; or (*d*) goods not stated in the bill of entry or application have been concealed in, or mixed with, the articles specified therein, or have apparently been packed so as to deceive the officers of Customs, and such circumstance is not accounted for to the satisfaction of the Customs-collector,	86 & 137	such packages, together with the whole of the goods contained therein, shall be liable to confiscation, and every person concerned in any such offence shall be liable to a penalty not exceeding one thousand rupees.
38.—If, when goods are passed by tale or by package, any omission or misdescription thereof tending to injure the revenue be discovered,	86 & 94	the person guilty of such omission or misdescription shall be liable to a penalty not exceeding ten times the amount of duty which

(Chapter XVI.—Offences and Penalties.)

Offences.	Section of this Act to which offence has reference.	Penalties.
		might have been lost to Government by such omission or misdescription, unless it be proved to the satisfaction of the officer in charge of the custom-house that the variance was accidental.
39.—If, without entry duly made, any goods are taken or passed out of any custom-house or wharf,	86	the person so taking or passing such goods shall, in every such case, be liable to a penalty not exceeding five hundred rupees, and such goods shall be liable to confiscation.
40.—If any prohibited or dutiable goods are found, either before or after landing, concealed in any passenger's baggage,	General	such passenger shall be liable to a penalty not exceeding five hundred rupees, and such goods shall be liable to confiscation.
41.—If any goods entered to be warehoused are carried into the warehouse, unless with the authority, or under the care, of the proper officers of Customs, and in such manner, by such persons, within such time, and by such roads or ways, as such officers direct,	93	such goods shall be liable to confiscation, and any person so carrying them shall be liable to a penalty not exceeding one thousand rupees.
42.—If any goods entered to be warehoused are not duly warehoused in pursuance of such entry, or are withheld, or removed from any proper place of examination before they have been examined and certified by the proper officer,	94	such goods shall be deemed not to have been duly warehoused, and shall be liable to confiscation.
43.—If any warehouse goods be not warehoused in accordance with sections 94 and 95,	94 & 95	such goods shall be liable to confiscation.
44.—If the licensee of any private warehouse licensed under this Act does not open the same when required so to do by any officer entitled to have access thereto, or, upon demand made by any such officer, refuses access to any such officer,	97	such licensee shall be liable to a penalty not exceeding one thousand rupees, and shall further be liable to have his license forthwith cancelled.
45.—If the keeper of any public warehouse, or the licensee of any private ware house, neglects to stow the goods warehoused therein, so that easy access may be had to every package and parcel thereof,	Chap. XI	such keeper or licensee shall, for every such neglect, be liable to a penalty not exceeding fifty rupees.

(Chapter XVI.—Offences and Penalties.)

Offences.	Section of this Act to which offence has reference.	Penalties.
46.—If the owner of any warehoused goods, or any person in the employ of such owner, clandestinely opens any warehouse, or, except in presence of the proper officer of Customs, gains access to his goods,	99	such owner or person shall, in every such case, be liable to a penalty not exceeding one thousand rupees.
47.—If any warehoused goods are opened in contravention of the provisions of section 98; or if any alteration be made in such goods or in the packing thereof, except as provided in section 100,	98 & 100	such goods shall be liable to confiscation.
48.—If any goods lodged in a private warehouse are found at the time of delivery therefrom to be deficient, and such deficiency is not due solely to ullage or wastage, as allowed under sections 116 and 117,	123	the licensee of such warehouse shall, unless the deficiency be accounted for to the satisfaction of the Customs-collector, be liable to a penalty equal to five times the duty chargeable on the goods so deficient.
49.—If the keeper of any public warehouse, or the licensee of any private warehouse, fails, on the requisition of any officer of Customs, to produce any goods which have been deposited in such warehouse, and which have not been duly cleared and delivered therefrom, and is unable to account for such failure to the satisfaction of the Customs-collector,	123	such keeper or licensee shall, for every such failure, be liable to pay the duties due on such goods, and also a penalty not exceeding fifty rupees in respect of every package or parcel so missing or deficient.
50.—If any goods, after being duly warehoused, are fraudulently concealed in, or removed from the warehouse, or abstracted from any package, or transferred from one package to another, or otherwise, for the purpose of illegal removal or concealment,	Chap. XI	such goods shall be liable to confiscation, and any person concerned in any such offence shall be liable to a penalty not exceeding one thousand rupees.
51.—If any goods lodged in a private warehouse are found to exceed the registered quantity,	Ditto	such excess, unless accounted for to the satisfaction of the officer in charge of the custom-house, shall be charged with five times the ordinary duty thereon.
52.—If any goods be removed from the warehouse in which they were originally deposited, except in the presence, or with the sanction, of the proper officer, or under the proper authority for their delivery,	Ditto	such goods shall be liable to confiscation, and any person so removing them shall be liable to a penalty not exceeding one thousand rupees.

(Chapter XVI.—Offences and Penalties.)

Offences.	Section of this Act to which offence has reference.	Penalties.
53.—If any person illegally takes any goods out of any warehouse without payment of duty, or aids, assists or is concerned therein.	Chap XI	such person shall be liable to a penalty not exceeding one thousand rupees.
54.—If any person contravenes any rule regarding the process of transhipment made by the [1][Chief Customs-authority,] or any prohibition or order relating to transhipment notified by the [2][Central Government], or tranships goods not allowed to be transhipped,	130 134	such person shall be liable to a penalty not exceeding one thousand rupees; and any goods in respect of which such offence has been committed shall be liable to confiscation.
55.—If any goods be taken on board of any vessel at any customs-port in contravention of section 136,	136	the master of such vessel shall be liable to a penalty not exceeding one thousand rupees.
56.—If any goods not specified in a duly passed shipping bill are taken on board of any vessel, contrary to the provisions of section 137,	137	the master of such vessel shall be liable to a penalty not exceeding fifty rupees for every package of such goods.
57.—If any goods specified in the manifest of any vessel, or in any shipping bill, are not duly shipped before the departure of such vessel, or are relanded, and notice of such short-shipment or relanding be not given as required by section 140,	140	the owner of such goods shall be liable to a penalty not exceeding one hundred rupees; and such goods shall be liable to confiscation.
58.—If any goods duly shipped on board of any vessel be landed, except under section 141, 142 or 143, at any place other than that for which they have been cleared,	141	the master of such vessel shall, unless the landing be accounted for to the satisfaction of the Customs-collector, be liable to a penalty not exceeding three times the value of such goods so landed.
59.—If any goods on account of which drawback has been paid be not found on board of any vessel referred to in section 142.	[3][142]	the master of such vessel shall be liable to a penalty not exceeding the entire value of such goods, unless the fact be accounted for to the satisfaction of the Customs-collector.

[1] Subs. by the Decentralization Act, 1914 (4 of 1914), s. 2 and Sch., Pt. I, for "L. G.".
[2] Subs. by the A. O. 1937 for "G. G. in C.".
[3] Subs. by the Amending Act, 1891 (12 of 1891), for "141".

(Chapter XVI.—Offences and Penalties.)

Offences.	Section of this Act to which offence has reference.	Penalties.
60.—If any person, without a special pass from an officer of Excise at the place of exportation, relands or attempts to rule relating to spirits made under tation,	154	such person shall be liable to a penalty not exceeding five hundred rupees.
61.—If any person wilfully contravenes any rule relating to spirits made under section 155,	155	such person shall be liable to a penalty not exceeding five hundred rupees; and all such spirit shall be liable to confiscation.
62.—If, in contravention of any rules made under section 157, any goods are taken into, or put out of, or carried in, any coasting-vessel; or if any such rules be otherwise infringed,	157	the master of such vessel shall be liable to a penalty not exceeding one thousand rupees.
63.—If, contrary to any such rules, any coasting-vessel touches at any foreign port, or deviates from her voyage, unless forced by unavoidable circumstances; or if the master of any such vessel which has touched at a foreign port fails to declare the same in writing to the Customs-collector at the customs-port at which such vessel afterwards first arrives,	159	the master of such vessel shall be liable to a penalty not exceeding one thousand rupees; and if any goods liable to export-duty have been landed from, or any goods liable to import-duty have been shipped in, such vessel at such foreign port, such master shall further be liable to a penalty not exceeding three times the duty which would have been leviable on such goods if they had been exported from, or imported at, a customs-port to or from a foreign port, as the case may be.
64.—If in the case of any coasting-vessel any of the provisions of section 158, 159 or 160 are not complied with,	158, 159 & 160	the master of such vessel shall in each such case be liable to a penalty not exceeding five hundred rupees.
65.—If the person executing any bond given under section 161 fail to produce the certificate mentioned in the same section, or to show sufficient reason for its non-production,	161	such person shall be bound to pay a penalty equal to double the amount of customs-duties which would have been chargeable on the export-cargo of the vessel had she been declared to be bound to a foreign port.

(Chapter XVI.—Offences and Penalties.)

Offences.	Section of this Act to which offence has reference.	Penalties.
66.—If the master of any coasting-vessel violates any of the conditions under which a general pass for such vessel has been granted,	164	such master shall be liable to a penalty not exceeding one thousand rupees.
67.—If any master of a coasting-vessel contravenes any of the provisions of section 165,	165	such master shall be liable to a penalty not exceeding five hundred rupees.
68.—If, upon examination, any package entered in the cargo-book required by section 165, as containing dutiable goods, is found not to contain such goods; or if any package is found to contain dutiable goods not entered, or not entered as such, in such book,	165	such package, with its contents, shall be liable to confiscation.
69.—If the master of any coasting-vessel required under section 165 to keep a cargo-book fails correctly to keep, or to cause to be kept, such book, or to produce the same on demand; or if at any time there be found on board of any such vessel any goods not entered in such book as laden, or any goods noted as delivered; or if any goods entered as laden, and not noted as delivered, be not on board,	165	such master shall be liable to a penalty not exceeding five hundred rupees.
70.—If, contrary to the provisions of this or any other law for the time being in force relating to the Customs, any goods are laden on board of any vessel in any customs-port and carried coast-wise; or if any goods which have been brought coast-wise are so unladen in any such port; or if any goods are found on board of any coasting-vessel without being entered in the manifest or cargo-book or both (as the case may be) of such vessel,	Chap. XV	such goods shall be liable to confiscation, and the master of such vessel shall be liable to a penalty not exceeding five hundred rupees.
71.—If the master of any coasting-vessel refuses to bring any document to the Customs-collector when so required under section 166,	166	such master shall be liable to a penalty not exceeding two hundred rupees.
72.—If any person makes or signs, or uses, any declaration or document used in the transaction of any business relating to the Customs, knowing such declaration or document to be false in	General	such person shall, on conviction of any such offence before a Magistrate, be liable to a fine not exceeding one thousand rupees.

(*Chapter XVI.—Offences and Penalties.*)

Offences.	Section of this Act to which offence has reference.	Penalties.
any particular ; or counterfeits, falsifies or fraudulently alters or destroys any such document, or any seal, signature, initials or other mark made or impressed by any officer of Customs in the transaction of any business relating to the Customs ; or, being required under this Act to produce any document, refuses or neglects to produce such document ; or, being required under this Act to answer any question put to him by an officer of Customs, does not truly answer such question,		
73.—If any person on board of any vessel or boat in any customs-port, or who has landed from any such vessel or boat, upon being asked by any such officer whether he has dutiable or prohibited goods about his person or in his possession, declares that he has not, and if any such goods are, after such denial, found about his person or in his possession,	General	such goods shall be liable to confiscation, and such person shall be liable to a penalty not exceeding three times the value of such goods.
74.—If any officer of Customs require any person to be searched for dutiable or prohibited goods, or to be detained, without having reasonable ground to believe that he has such goods about his person, or has been guilty of an offence relating to the Customs,	169	such officer shall, on conviction before a Magistrate, be liable to a fine not exceeding five hundred rupees.
75.—If any officer of Customs or other person duly employed for the prevention of smuggling, is guilty of a wilful breach of the provisions of this Act,	General	such officer or person shall, on conviction before a Magistrate, be liable to simple imprisonment for any term not exceeding two years, or to fine, or to both.
76.—If any officer of Customs, or other person duly employed for the prevention of smuggling, practises, or attempts to practise, any fraud for the purpose of injuring the customs-revenue, or abets or connives at any such fraud, or any attempt to practise any such fraud,	Ditto	Ditto ditto.
77.—If any Police-officer, whose duty it is, under section 180, to send a written notice or cause goods to be conveyed to a custom-house, neglects so to do,	180	such officer shall, on conviction before a Magistrate, be liable to a penalty not exceeding one hundred rupees.

(*Chapter XVI.—Offences and Penalties.*)

Offences.	Section of this Act to which offence has reference.	Penalties.
78.—If any person intentionally obstructs any officer of Customs or other person duly employed for the prevention of smuggling, in the exercise of any powers given under this Act to such officer or person,	General	such person shall, on conviction before a Magistrate, be liable to imprisonment for any term not exceeding six months, or to a fine not exceeding one thousand rupees, or to both.
79.—If any officer of Customs, except in the discharge in good faith of his duty as such officer, discloses any particulars learned by him in his official capacity in respect of any goods or shows any samples delivered to him in such capacity, or if any officer of Customs, except as permitted by this Act, parts with the possession of any samples delivered to him in his official capacity,	195	he shall be liable to a penalty not exceeding one thousand rupees.
80.—If any person, without the approval of ~~the Customs-collector under section 202~~ acts as an agent for the transaction of business as therein mentioned, — A.A. 15 No 94 - P.I. Sec. 6 58.	202	such person shall be liable to a penalty not exceeding five hundred rupees.

Nothing in the second column of the above schedule shall be deemed to have the force of law.

168. The confiscation of any goods under this Act includes any package in which they are found, and all the other contents thereof. **Packages and contents included in confiscation of goods.**

Every vessel, cart or other means of conveyance, and every horse or other animal, used in the removal of any goods liable to confiscation under this Act shall in like manner be liable to confiscation. **Also conveyances and animals used in removal.**

The confiscation of any vessel under this Act includes her tackle, apparel and furniture. **Tackle, etc., included in confiscation of vessels.**

(Chapter XVII.—Procedure relating to Offences, Appeals, etc.)

CHAPTER XVII.[1]

PROCEDURE RELATING TO OFFENCES, APPEALS, ETC.

Power to search on reasonable suspicion.

169. Any officer of Customs duly employed in the prevention of smuggling may search any person on board of any vessel in any port in [2][the States], or any person who has landed from any vessel:

Provided that such officer has reason to believe that such person has dutiable or prohibited goods secreted about his person.

Persons may, before search, require to be taken before Magistrate or Customs-collector.

170. When any officer of Customs is about to search any person under the provisions of section 169, such person may require the said officer to take him, previous to search, before the nearest Magistrate or Customs-collector.

If such requisition be made, the officer of Customs may detain the person making it until he can bring him before the nearest Magistrate or Customs-collector.

The Magistrate or Customs-collector before whom any person is so brought shall, if he see no reasonable ground for search, forthwith discharge such person; but if otherwise, shall direct that the search be made.

A female shall not be searched by any but a female.

170A. Act No 9,

Power to stop vessels, carts, etc., and search for goods on reasonable suspicion.

171. Any duly empowered officer of Customs or other person duly employed for the prevention of smuggling, may stop and search for smuggled goods any vessel, cart or other means of conveyance: provided that he has reason to believe that smuggled goods are contained therein.

171A. Act No

Power to issue search-warrants.

172. Any Magistrate may, on application by a Customs-collector, stating his belief that dutiable or prohibited goods are secreted in any place within the local limits of the jurisdiction of such Magistrate, issue a warrant to search for such goods. Act No 94 ...

Act No 94

Such warrant shall be executed in the same way, and shall have the same effect, as a search-warrant issued under the law relating to Criminal Procedure.[3]

Persons reasonably suspected may be arrested.

173. Any person against whom a reasonable suspicion exists that he has been guilty of an offence under this Act may be arrested in any place, either upon land or water, by any officer of Customs or other person duly employed for the prevention of smuggling.

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[1] The powers conferred on officers of Customs under this Chapter may be exercised by them for the prevention of offences against the Indian Emigration Act, 1922 (7 of 1922), *see* s. 29 of that Act

[2] *See* footnote 1 on p 454 *supra*.

[3] *See* now the Code of Criminal Procedure, 1898 (5 of 1898).

(Chapter XVII.—Procedure relating to Offences, Appeals, etc.)

174. Every person arrested on the ground that he has been guilty of an offence under this Act shall forthwith be taken before the nearest Magistrate or Customs-collector.

Persons arrested to be taken to nearest Magistrate or Customs-collector.

175. When any such person is taken before a Magistrate, such Magistrate may, if he thinks fit, either commit him to gaol or order him to be kept in the custody of the Police for such time as is necessary to enable such Magistrate to communicate with the proper officers of Customs:

Provided that any person so arrested, committed or kept shall be released on giving security to the satisfaction of the Magistrate to appear at such time and place as such Magistrate appoints in this behalf.

Persons taken before Magistrate may be detained or admitted to bail.

176. If any person liable to be arrested under this Act is not arrested at the time of committing the offence for which he is so liable, or after arrest make his escape, he may at any time afterwards be arrested and taken before a Magistrate, to be dealt with as if he had been arrested at the time of committing such offence.

Person escaping may be afterwards arrested.

177. When any person employed on the crew of any of the ships of Her Majesty's Navy [1][or [3][the Indian Navy]] is arrested under this Act, the arresting officer shall forthwith give notice thereof to the commanding officer of the ship, who shall thereupon place such person in security on board of such ship, until the arresting officer has obtained a warrant from a Magistrate for bringing up such person to be dealt with according to law.

The Magistrate shall grant such warrant upon complaint made to him by the arresting officer, stating the offence for which the person is detained.

Persons in Her Majesty's Navy, or the Indian Navy when arrested, to be secured on board until warrant procured.

178. Any things liable to confiscation under this Act may be seized in any place, either upon land or water, by any officer of Customs or other person duly employed for the prevention of smuggling.

Seizure of things liable to confiscation.

178A. 94.

179. All things seized on the ground that they are liable to confiscation under this Act shall, as soon as conveniently may be, be delivered into the care of any Customs-officer authorized to receive the same.

If there be no such officer at hand, all such things shall be carried to and deposited at the custom-house nearest to the place of seizure.

If there be no custom-house within a convenient distance, such things shall be deposited at the nearest place appointed by the [3][Chief Customs-officer] for the deposit of things so seized.

Things seized how dealt with.

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[1] Subs. by the A. O. 1937 for "Indian Marine or Marine Survey".

[2] Subs. by the A. O. 1950 for "His Majesty's Indian Navy".

[3] Subs. by the Decentralization Act, 1914 (4 of 1914), s. 2 and Sch., Pt. I, for "Chief Customs-authority".

(Chapter XVII.—Procedure relating to Offences, Appeals, etc.)

Procedure in respect of things seized on suspicion.

180. When any things liable to confiscation under this Act are seized by any Police-officer on suspicion that they have been stolen, he may carry them to any police-station or Court at which a complaint connected with the stealing or receiving of such things has been made, or an enquiry connected with such stealing or receiving is in progress, and there detain such things until the dismissal of such complaint or the conclusion of such enquiry or of any trial thence resulting.

In every such case the Police-officer seizing the things shall send written notice of their seizure and detention to the nearest custom-house; and immediately after the dismissal of the complaint or the conclusion of the enquiry or trial, he shall cause such things to be conveyed to, and deposited at, the nearest custom-house, to be there proceeded against according to law.

When seizure or arrest is made, reason in writing to be given

181. When anything is seized, or any person is arrested under this Act, the officer or other person making such seizure or arrest shall, on demand of the person in charge of the thing so seized, or of the person so arrested, give him a statement in writing of the reason for such seizure or arrest.

Power to detain packages containing certain publications imported into the States.

[1]**[181A.** (1) The Chief Customs-officer or other officer authorised by the [2][State Government] in this behalf may detain any package, brought whether by land or sea into [3][the States] which he suspects to contain—

(*a*) any newspaper or book as defined in the Press and Registration of Books Act, 1867, or XXV of 1867.

(*b*) any document,

containing any seditious matter, that is to say, any matter the publication of which is punishable under section 124A of the Indian Penal Code, and shall forward such package to such officer as the [2][State Government] may appoint in this behalf. XLV of 1860.

(*2*) Any officer detaining a package under the provisions of sub-section (*1*) shall, where practicable, forthwith send by post to the addressee or consignee of such package notice of the fact of such detention.

(*3*) The [2][State Government] shall cause the contents of such package to be examined, and if it appears to the [2][State Government] that the package contains any such newspaper, book or other document, containing any such seditious matter, may pass such orders as to the disposal of the package and

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[1] Ins. by the Press Law Repeal and Amendment Act, 1922 (14 of 1922), s. 4 and Sch. II.

[2] Subs. by the A. O. 1950 for "Provincial Government" which had been Subs. by the A. O. 1937 for "L. G.".

[3] *See* footnote 1 on p. 454 *supra*.

its contents as it may deem proper, and, if it does not so appear, shall release the package and its contents unless the same be otherwise liable to seizure under any law for the time being in force:

Provided that any person interested in any package detained under the provisions of this section may, within two months from the date of such detention, apply to the [1][State Government] for release of the same, and the [1][State Government] shall consider such application and pass such orders thereon as it may deem to be proper:

Provided, further, that, if such application is rejected, the applicant may, within two months from the date of the order rejecting the application, apply to the High Court for release of the package or its contents on the ground that the package did not contain any such newspaper, book or other document containing any such seditious matter.

(*4*) In this section, "document" includes also any painting, drawing or photograph, or other visible representation.]

Procedure for disposal by High Court of applications for release of packages so detained.

V of 1898.

[2][**181B.** Every application under the second proviso to sub-section (*3*) of section 181A shall be heard and determined, in the manner provided by sections 99D to 99F of the Code of Criminal Procedure, 1898, by a Special Bench of the High Court constituted in the manner provided by section 99C of that Code.]

Jurisdiction barred.

[2][**181C.** No order passed or action taken under section 181-A shall be called in question in any Court otherwise than in accordance with the second proviso to sub-section (*3*) of that section.]

Adjudication of confiscations and penalties.

182. In every case, except, the cases mentioned in section 167, Nos. 26, 72 and 74 to 76, both inclusive, in which, under this Act, any thing is liable to confiscation or to increased rates of duty,

or any person is liable to a penalty,

such confiscation, increased rate of duty or penalty may be adjudged—

(*a*) without limit, by a Deputy Commissioner or Deputy Collector of Customs, or a Customs-collector;

(*b*) up to confiscation of goods not exceeding two hundred and fifty rupees in value, and imposition of penalty or increased duty, not

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[1] *See* footnote 2 on pre-page.

[2] Ins. by the Press Law Repeal and Amendment Act, 1922 (14 of 1922), s. 4 and Sch. II.

exceeding one hundred rupees, by an Assistant Commissioner or Assistant Collector of Customs;

(*c*) up to confiscation of goods not exceeding fifty rupees in value, and imposition of penalty or increased duty not exceeding ten rupees, by such other subordinate officers of Customs as the [1][Chief Customs-authority] may, from time to time, empower in that behalf in virtue of their office:

Provided that the [1][Chief Customs-authority] may, in the case of any officer performing the duties of a Customs-collector, limit his powers to those indicated in clause (*b*) or in clause (*c*) of this section, and may confer on any officer, by name or in virtue of his office, the powers indicated in clause (*a*), (*b*) or (*c*) of this section.

Option to pay fine in lieu of confiscation.

183. Whenever confiscation is authorized by this Act, the officer adjudging it shall give the owner of the goods an option to pay in lieu of confiscation such fine as the officer thinks fit.

On confiscation, property to vest in Government.

184. When anything is confiscated under section 182, such thing shall thereupon vest in [2][Government].

The officer adjudging confiscation shall take and hold possession of the thing confiscated, and every officer of Police, on the requisition of such officer, shall assist him in taking and holding such possession.

Levy of penalty for failure to bring-to.

185. If any vessel actually departs without a port-clearance, or after failing to bring-to when required at any station appointed under section 17, the penalty to which the master of such vessel is liable may be adjudged by the Chief Customs-officer of any customs-port to which such vessel proceeds, or in which she is[3]* * * *

A certificate of such departure or failure to bring-to when required, purporting to be signed by the Chief Customs-officer of the port from which the vessel is stated to have so departed, shall be *prima facie* proof of the fact so certified.

Penalty under Act not to interfere with punishment under other law.

186. The award of any confiscation, penalty or increased rate of duty under this Act by an officer of Customs shall not prevent the infliction of any punishment to which the person affected thereby is liable under any other law.

Offences not specially provided for how tried.

187. All offences against this Act, other than those cognizable under section 182 by officers of Customs, may be tried summarily by a Magistrate.

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[1] Subs. by the Decentralization Act, 1914 (4 of 1914), s. 2 and Sch., Pt. I, for "L. G.".

[2] Subs. by the A. O. 1950 for "Her Majesty".

[3] The words "and, in the case of Aden, by such officer as the Governor of Bombay in Council appoints in this behalf." rep. by the A. O. 1937.

(Chapter XVII.—Procedure relating to Offences, Appeals, etc.)

188. Any person deeming himself aggrieved by any decision or order passed by an officer of Customs under this Act may, within three months from the date of such decision or order, appeal therefrom to the Chief Customs-authority, or, in such cases as [1][the Central Government] directs, to any officer of Customs not inferior in rank to a Customs-collector and empowered in that behalf by name or in virtue of his office by [1][the Central Government]. **Appeal from subordinate to Chief Customs-authority.**

Such authority or officer may thereupon make such further inquiry and pass such order as he thinks fit, confirming, altering or annulling the decision or order appealed against:

Provided that no such order in appeal shall have the effect of subjecting any person to any greater confiscation, penalty or rate of duty than has been adjudged against him in the original decision or order.

Every order passed in appeal under this section shall, subject to the power of revision conferred by section 191, be final.

189. Where the decision or order appealed against relates to any duty or penalty leviable in respect of any goods, the owner of such goods, if desirous of appealing against such decision or order, shall, pending the appeal, deposit in the hands of the Customs-collector at the port where the dispute arises the amount demanded by the officer passing such decision or order. **Deposit, pending appeal, of duty demanded.**

When delivery of such goods to the owner thereof is withheld merely by reason of such amount not being paid, the Customs-collector shall, upon such deposit being made, cause such goods to be delivered to such owner.

If upon any such appeal it is decided that the whole or any portion of such amount was not leviable in respect of such goods, the Customs-collector shall return such amount or portion (as the case may be) to the owner of such goods on demand by such owner.

190. If upon consideration of the circumstances under which any penalty, increased rate of duty or confiscation has been adjudged under this Act by an officer of Customs, the Chief Customs-authority is of opinion that such penalty, increased rate or confiscation ought to be remitted in whole or in part, or commuted, such authority may remit the same or any portion thereof, or may, with the consent of the owner of any goods ordered to be confiscated, commute the order of confiscation to a penalty not exceeding the value of such goods. **Power to remit penalty or confiscation.**

190A.

[1] Subs. by the A. O. 1937 for "the G. G. in C." which had been subs. for "the L. G." by the Central Board of Revenue Act, 1924 (4 of 1924), s. 4 and Sch.

(*Chapter XVII.—Procedure relating to Offences, Appeals, etc. Chapter XVIII.—Miscellaneous.*)

Revision by the Central Government.

191. [1][The Central Government] may, on the application of any person aggrieved by any decision or order passed under this Act by any officer of Customs or Chief Customs-authority, and from which no appeal lies, reverse or modify such decision or order.

Goods on which penalty incurred not to be removed till payment.

192. When any fine, penalty or increased rate of duty is leviable under this Act, the goods in respect of which such fine, penalty or rate is leviable shall not be removed by the owner until such fine, penalty or rate is paid.

Other goods of person liable to fine or penalty may be detained.

If any person has become liable to any such fine, penalty or rate in respect of any goods, the Customs-collector may detain any other goods belonging to such person passing through the custom-house until such fine, penalty or rate is paid.

Enforcement of payment of penalty.

193. When a penalty or increased rate of duty is adjudged against any person under this Act by any officer of Customs, such officer, if such penalty or increased rate be not paid, may levy the same by sale of any goods of the said person which may be in his charge or in the charge of any other officer of Customs.

When an officer of Customs who has adjudged a penalty or increased rate of duty against any person under this Act is unable to realize the unpaid amount thereof from such goods, such officer may notify in writing to any Magistrate within the local limits of whose jurisdiction such person or any goods belonging to him may be, the name and residence of the said person and the amount of penalty or increased rate of duty unrecovered; and such Magistrate shall thereupon proceed to enforce payment of the said amount in like manner as if such penalty or increased rate has been a fine inflicted by himself.

CHAPTER XVIII.

MISCELLANEOUS.

Power to open packages and examine goods.

194. Any officer of Customs may open any package, and examine any goods brought by sea to, or shipped or brought for shipment at, any customs-port.

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[1] Subs. by the A. O. 1937 for "The G. G. in C." which had been subs. for "The L. G." by the Central Board of Revenue Act, 1924 (4 of 1924), s. 4 and Sch.

195. [1][(*1*)] The Customs-collector may, on the entry or clearance of any goods or at any time while such goods are being passed through the custom-house, take samples of such goods, for examination or for ascertaining the value thereof on which duties are payable, or for any other necessary purpose.

Power to take samples of goods.

Every such sample shall, if practicable, be at the option of the owner either restored to him, or sold and the proceeds accounted for to him.

[2][(*2*) in the case of goods which consist of drugs or articles intended for consumption as food, and in respect of which the taking of samples for the purposes of this sub-section may have been authorised by general or special order of the [3][State Government], the Customs-collector may also in like circumstances take samples thereof for submission to, and examination by, such officer of Government or of a local authority as may be specified in such order. The real value of all such samples shall be paid to the owner by the Customs-collector.]

[4][**195A.** (*1*) When by any law for the time being in force a duty of customs is imposed on mineral oil which is specified as being suitable or as not being suitable for use as an illuminant in wick lamps, the Chief Customs Authority may make rules for determining in disputed cases whether any mineral oil is or is not suitable for such use.

Power to make rules for determining whether mineral oil is suitable for use as an illuminant.

(*2*) In particular such rules may—

(*a*) specify the design, construction and materials of test lamps to be used for testing the burning properties of mineral oil in wick lamps and provide for the standardisation of such test lamps; and

(*b*) prescribe the manner in which and the persons by whom tests are to be carried out and the standards to be accepted for deciding whether any mineral oil is or is not suitable for use as an illuminant in wick lamps.]

196. The unshipping, carrying, shipping and landing of all goods, and the bringing of them to the proper place for examination or weighing, and the putting of them into and out of the scales, and the opening, unpacking, bulking, sorting, lotting, marking and numbering of goods, where such operations are necessary or permitted,

Owner to pay expense incidental to compliance with Customs law.

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[1] S. 195 was renumbered as sub-section (*1*) of that section by the Sea Customs (Amendment) Act, 1919 (13 of 1919), s. 2.

[2] Ins. by s. 2, *ibid.*

[3] Subs. by the A. O. 1950 for "Provincial Government" which had been subs. by the A. O. 1937 for "L. G.".

[4] Ins. by the Indian Tariff (Second Amendment) Act, 1933 (28 of 1933), s. 4.

and the removing of goods to, and the placing of them in, the proper place of deposit,

shall be performed by or at the expense of the owner of such goods.

No compensation for loss or injury except on proof of neglect or wilful act.

197. No owner of goods shall be entitled to claim from any officer of Customs compensation for any loss or damage occurring to such goods at any time while they remain or are lawfully detained in any custom-house, or on any custom-house wharf, or under charge of any officer of Customs, unless it be proved that such loss or damage was occasioned by the neglect or wilful act of such officer of Customs.

Notice of proceedings.

198. No proceeding other than a suit shall be commenced against any person for anything purporting to be done in pursuance of this Act without giving to such person a month's previous notice in writing of the intended proceeding and of the cause thereof; or

Limitation.

after the expiration of three months from the accrual of such cause.

Wharfage fees.

199. The [1][Chief Customs-officer] may from time to time fix the period after the expiration of which goods left on any custom-house wharf, or other authorized landing-place or part of the custom-house premises, shall be subject to payment of fees and the amount of such fees.

Duplicates of documents may be granted on payment of fee.

200. A duplicate of any certificate, manifest, bill or other custom-house document may, on payment of a fee not exceeding ten rupees, be furnished, at the discretion of the Customs-collector to any person applying for the same, if the Customs-collector is satisfied that no fraud has been committed or is intended by the applicant.

Amendment of documents.

201. Except in the cases provided for by sections 36, 55, 63 and 94, the Customs-collector may in his discretion, upon payment of one rupee, authorize any document, after it has been entered and recorded in the custom-house, to be amended.

Custom-house agents.

202. No person authorized to act as an agent for the transaction of any business relating to the entrance or clearance of any vessel or the import or export of goods or baggage shall so act in any custom-house unless such authorization is approved by the Customs-collector.

Such officer may require any person so authorized to give a bond with sufficient security in any sum not exceeding five thousand rupees for his faithful behaviour as regards the custom-house regulations and officers.

Such officer may, in case of misbehaviour of the person so authorized, suspend or withdraw such approval, but an appeal against every such

[1] Subs. by the Decentralization Act, 1914 (4 of 1914), s. 2 and Sch., Pt. I, for "Chief Customs-authority".

suspension or withdrawal shall lie to the Chief Customs-authority, whose decision thereon shall be final.

Every appeal under this section shall be made within one month of the suspension or withdrawal.

Agent to produce authority if required.

203. When any person applies to any officer of Customs for permission to transact any specified business with him on behalf of any other person, such officer may require the applicant to produce a written authority from the person on whose behalf such business is to be transacted, and in default of the production of such authority may refuse such permission.

The clerk, servant or agent of any person or mercantile firm may transact business generally at the custom-house on behalf of such person or firm : Provided that the Customs-collector may refuse to recognize such clerk, servant or agent unless such person or a member of such firm identifies such clerk, servant or agent to the Customs-collector as empowered to transact such business, and deposits with the Customs-collector an authority in writing duly signed, authorizing such clerk, servant or agent to transact such business on behalf of such person or firm.

Rules to be notified.

204. All rules made under this Act shall be notified in the Official Gazette and shall thereupon have the force of law.

All such rules for the time being in force shall be collected, arranged and published at intervals not exceeding two years, and shall be sold to the public at a reasonable price.

Publication of notifications in Official Gazettes.

[1][**205.** Any notification published in the [2][Official Gazette] by the Chief Customs-authority under section 53, section 74, section 76, section 79, section 85, section 96, section 116, section 128, section 133 or section 147 shall forthwith be re-published [3][with the consent of the [4][State] Government] in the [5][Official Gazette] of each [6][State] to which it relates.]

Remission of duty and compensation to owner in certain cases.

206. If in any case relating to the removal of goods from a warehouse without payment of duty, the person offending be an officer of Customs not acting in execution of his duty, and be prosecuted to conviction by the owner of such goods, no duty shall be payable in respect of such goods.

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[1] The original section relating to cancellation of notifications had been rep. by the Repealing and Amending Act, 1914 (10 of 1914). The present section was ins. by the Central Board of Revenue Act, 1924 (4 of 1924), s. 4 and Sch.

[2] Subs. by the A. O. 1937 for "Gazette of India".

[3] Ins. by the A. O. 1937.

[4] Subs. by the A. O. 1950 for "Provincial".

[5] Subs. by the A. O. 1937 for "local official Gazette".

[6] Subs. by the A. O. 1950 for "Province".

For any damage so occasioned by such officer, the [1][Chief Customs-officer, or the Customs-collector with the sanction of the Chief Customs-officer, shall] make due compensation to such owner:

[2][Provided that compensation exceeding Rs. 250 shall be paid with the sanction of the Chief Customs-authority.]

Saving of Calcutta Port Commissioners' and Bombay Port Trust Acts.

207. Nothing in this Act shall affect any law for the time being in force relating to the Commissioners for making improvements in the Port of Calcutta or the Trustees of the Port of Bombay [3][or any like body hereafter created for any other port].

SCHEDULE.

PART I.—Rep. by the Repealing Act, 1938 (1 of 1938), s. 2 and Sch.

PART II.

FORMS.

A

FORM OF BOND FOR IMPORT-DUTY.

(*See section 92.*)

BOND.

No. 18

We, *A. B.*,

now of

, and *C. D.*,

of the same place, are [4][jointly and severally bound to the [5][President] of India in the sum of rupees to be paid to the said [5][President], for which payment] we jointly and severally bind ourselves and our legal representatives.

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[1] Subs. by the Decentralization Act, 1914 (4 of 1914), s. 2 and Sch., Pt. I. for "Customs-collector shall, with the sanction of the Chief Customs-authority".

[2] Ins., *ibid.*

[3] Subs. by the Excise and Sea Customs Law Amendment Act, 1885 (9 of 1885), s. 6, for "respectively".

[4] Subs. by the A. O. 1948 for the original words, as amended by the A. O. 1937.

[5] Subs. by the A. O. 1950 for "Governor General".

(*Schedule.—Part II.*)

(*date*)

(*Signed*) ( )

The above bounden having applied to the officer in charge of the Custom-house at for and obtained permission to lodge in the warehouse for a period of the following goods, that is to say—

imported by sea from on board of the ship and entered in the Custom-house Books as No. of the Register of goods imported by sea;

The condition of this Bond is that;

If the , or their legal representatives, shall observe all the rules prescribed in the Sea Customs Act, 1878, to be observed by owners of goods warehoused, and by persons obtaining permission to warehouse goods under the provisions thereof;

And if the said , or their legal representatives, shall pay to the officer in charge of the Custom-house at the port of

all dues, whether customs-duties, warehouse-dues, rent or other lawful charges which shall be demandable on the said goods, or on account of penalties incurred in respect to them, within from the date of this Bond, or within such further time as the Chief Customs-authority of shall allow in that behalf, together with interest on every such sum at the rate of six per cent. per annum from the date of demand thereof being made in writing by the said officer in charge of the Custom-house;

And if, within the term so fixed or enlarged, the said goods, or any portion thereof, having been removed from the said warehouse for home consumption, or re-exportation by sea, the full amount of all customs-duties, warehouse-dues, rent and other lawful charges, penalties and interest demandable as aforesaid shall have been first paid on the whole of the said goods;

(*Schedule.—Part II.*)

This obligation shall be void.

Otherwise, and on breach or failure in the performance of any part of this condition, the same shall be in full force.

(*date*)

(*Signed*) ( )

B

FORM OF BONDED WAREHOUSE WARRANT.

(*See section 96.*)

I do hereby certify that have deposited in the warehouse of the undermentioned goods , which goods, the engage on demand, after payment of rent and incidental charges and [1][[2][Government] [dues] or customs chargeable thereon, to deliver to the said or their assigns, or to the holder of this warrant to whom it may be transferred by endorsement.

C

FORM OF BOND FOR THE REMOVAL OF SPIRIT FROM A LICENSED DISTILLERY.

(*See sections 144 and 152.*)

We,

are jointly and severally bound to [3][the Governor of] in the sum of Government rupees

to be paid to [4][the Governor of], for which payment we jointly and severally bind ourselves and our legal representatives.

Dated this day of 18

(*Signed*) ( )

The above bounden being indebted to [3][the Governor of] in the sum of Government rupees

[1] Subs. by the A. O. 1937 for "Govt. dues".
[2] Subs. by the A. O. 1950 for "Crown".
[3] Subs. by the A. O. 1937 for "Her Majesty's Secretary of State for India in Council".
[4] Subs. by the A. O. 1937 for "the said Secretary of State in Council".

(*Schedule.—Part II.*)

being the amount of duty payable at the rate of rupees per imperial gallon London proof, for gallons of (*or* for gallons of proof spirit used in the preparation of dozens of bottles, *or* gallons of cordials and liquors, as specified in the annexed schedule) manufactured at which the said have been allowed to remove thence for exportation by sea subject to the provisions of the Sea Customs Act, 1878, without having paid such duty.

The condition of this obligation is that, if the above bounden , or their legal representatives, shall, at the expiration of four calendar months from the date of this obligation, pay or cause to be paid to [1][the Governor of] duty at the rate of rupee per imperial gallon of proof spirit for all or any portion of the abovementioned which shall not have been then exported by sea to a foreign port subject to the aforesaid provisions (of which exportation, if any, due proof shall be given), or passed for local consumption on payment of duty, then this bond shall be void; otherwise the same shall remain in full force.

Signed in the presence of

Place

Date

If the bond be for cordials and other liquors under section 152, add—

Schedule.

Description of cordials and liquors.	Quantity in bottles or gallons.	Quantity of proof spirit.
1	2	3

[1] Subs. by the A. O. 1937 for "the said Secretary of State in Council".

THE INDIAN ARMS ACT, 1878

CONTENTS.

PREAMBLE.

I.—Preliminary.

SECTIONS.

1. Short title.
   Local extent.
   Savings.
2. Commencement.
3. [*Repealed.*]
4. Interpretation-clause.

II.—Manufacture, Conversion and Sale.

5. Unlicensed manufacture, conversion and sale prohibited.

III.—Import, Export and Transport.

6. Unlicensed importation and exportation prohibited.
   Importation and exportation of arms and ammunition for private use.
7. Sanction of Central Government required to warehousing of arms, etc.
8. [*Repealed.*]
9. [*Repealed.*]
10. Power to prohibit transport.
    Transhipment of arms.
11. Power to establish searching stations.
12. Arrest of persons conveying arms, etc., under suspicious circumstances.
    Procedure where arrest made by person not Magistrate or Police-officer.

IV.—Going armed and possessing Arms, etc.

13. Prohibition of going armed without license.
14. Unlicensed possession of fire-arms, etc.
15. Possession of arms of any description without license prohibited in certain places.
16. In certain cases arms to be deposited at police-stations or with licensed dealers.

V.—Licenses.

SECTIONS.

17. Power to make rules as to licenses.

18. Cancelling and suspension of license.

VI.—Penalties.

19. For breach of sections 5, 6, 10, 13 to 17.

20. For secret breaches of sections 5, 6, 10, 14 and 15.

For concealing arms, etc.

21. For breach of license.

22. For knowingly purchasing arms, etc., from unlicensed person.

For delivering arms, etc., to person not authorised to possess them.

23. Penalty for breach of rule.

24. Power to confiscate.

VII.—Miscellaneous.

25. Search and seizure by Magistrate.

26. Seizure and detention by Central Government.

27. Power to exempt.

28. Information to be given regarding offences.

29. Sanction required to certain proceedings under section 19, clause (*f*).

30. Searches in the case of offences against section 19, clause (*f*), how conducted.

31. Operation of other laws not barred.

32. Power to take census of fire-arms.

33. Notice and limitation of proceedings.

THE FIRST SCHEDULE.—[*Repealed.*]

THE SECOND SCHEDULE.—[*Repealed.*]

ACT No. XI of 1878.[1]

[*15th March 1878.*]

An Act to consolidate and amend the law relating to Arms, Ammunition and Military Stores.

Preamble.

WHEREAS it is expedient to consolidate and amend the law relating to arms, ammunition and military stores; It is hereby enacted as follows:—

I.—Preliminary.

Short title. Local extent.

1. This Act may be called the Indian Arms Act, 1878; and it extends to [2][the whole of India ~~except Part B States~~]

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[1] For the Statement of Objects and Reasons, *see* Gazette of India, 1877, Pt. V, p. 650; for discussions in Council, *see ibid*, 1877, Supplement, pp. 3016 and 3030; *ibid*, 1878, Supplement, pp. 435 and 453.

This Act has been extended to Berar by the Berar Laws Act, 1941 (4 of 1941) and has been declared to be in force in Panth Piploda by the Panth Piploda Laws Regulation, 1929 (1 of 1929), s. 2; and except s. 15, in the Santhal Parganas by the Santhal Parganas Settlement Regulation (3 of 1872); in the Khondmals District by the Khondmals Laws Regulation, 1936 (4 of 1936), s. 3 and Sch.; and in the Angul District by the Angul Laws Regulation, 1936 (5 of 1936), s. 3 and Sch.

It has been declared to be in force throughout the province of Assam (except the Lushai Hills) by Notification No. 2443-T., dated the 1st June, 1914, Assam Gazette, 1914, Pt. II, p. 843.

It has been declared by notification under s. 3 (*a*) of the Scheduled Districts Act, 1874 (14 of 1874), to be in force in the Districts of Hazaribagh, Lohardaga and Manbhum, and in Pargana Dhalbhum and the Kolhan in the District of Singbhum, *see* Gazette of India, 1881, Pt. I, p. 504. [The District of Lohardaga included at this time the present District of Palamau, which was separated in 1894; Lohardaga is now called the Ranchi District, *see* Calcutta Gazette, 1899, Pt. I, p. 44.]

Its application to the Pargana of Spiti is barred by s. 14 of the Spiti Regulation, 1873 (1 of 1873).

As to the trial in a Presidency-town of offences against the Act, *see* the Code of Criminal Procedure 1898 (Act 5 of 1898), s. 184.

A license granted under the Indian Explosives Act, 1884 (4 of 1884), for the manufacture, possession, sale, transport or importation of an explosive may be given the effect of a like license granted under the Indian Arms Act, 1878 (11 of 1878), *see* Act 4 of 1884, s 15.

As to further law relating to unlawful manufacture and possession of explosive substances, *see* the Explosive Substances Act, 1908 (6 of 1908), ss. 4 (*b*) and 5.

The Act has been amended in Bengal by the Bengal Criminal Law (Arms and Explosives) Act, 1932 (Ben. 21 of 1932) and the Bengal Criminal Law (Amendment) Act, 1934 (Ben. 7 of 1934); in the Lushai Hills District by Assam Reg. 1 of 1938; and in the Naga Hills District by Assam Reg. 2 of 1938.

[2] Subs. by the A. O. 1950 for "all the Provinces of India" which had been subs. by the A. O. 1948 for "the whole of British India".

But nothing herein contained shall apply to—

(*a*) arms, ammunition or military stores on board any sea-going vessel [1][or aircraft] and forming part of her ordinary armament or equipment, or **Savings.**

(*b*) the manufacture, conversion, sale, import, export, transport, bearing or possession of arms, ammunition or military stores by order of [2][the Central Government or of any [3][State] Government], or by a public servant or [4][a member of either of the forces constituted by [5][the National Cadet Corps Act, 1948, or the Territorial Army Act, 1948]] in the course of his duty as such public servant or [6][member].

XXXI of 1948

LVI of 1948.

2. This Act shall come into force on such day[7] as the [8][Central Government] by notification in the [9][Official Gazette] appoints. **Commencement.**

3. [*Repeal of enactments.*] *Rep. by the Repealing Act, 1938 (1 of 1938), s. 2 and Sch.*

4. In this Act, unless there be something repugnant in the subject or context,— **Interpretation-clause.**

"cannon" includes also all howitzers, mortars, wall-pieces, mitrailleuses and other ordnance and machine-guns, all parts of the same, and all carriages, platforms and appliances for mounting, transporting and serving the same:

"arms" includes fire-arms, bayonets, swords, daggers, spears, spear-heads and bows and arrows, also cannon and parts of arms, and machinery for manufacturing arms:

"ammunition" includes also all articles specially designed for torpedo service and submarine mining, rockets, gun-cotton, dynamite, lithofracteur and other explosive or fulminating material, gun-flint, gun-wads, percussion-caps, fuses and friction-tubes, all parts of ammunition and all machinery for manufacturing ammunition, but does not include lead, sulphur or saltpetre:

"military stores", in any section of this Act as applied to any part of

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[1] Ins. by the Indian Arms (Amdt.) Act, 1949 (47 of 1949), s. 2.

[2] Subs. by the A. O. 1948 for "any Govt. in British India" which had been subs. by the A. O. 1937 for "the Govt.".

[3] Subs. by the A. O. 1950 for "Provincial".

[4] Subs. by the Auxiliary Force Act, 1920 (49 of 1920), s. 35, for "a Volunteer enrolled under the Indian Volunteers Act, 1869".

[5] Subs. by the A. O. 1950 for "the Indian Territorial Force Act, 1920, or the Auxiliary Force Act, 1920".

[6] Subs. by s. 35 of Act 49 of 1920, for "Volunteer".

[7] 1st October 1878—*see* Gazette of India, 1878, Pt. I, p. 389.

[8] Subs. by the A. O. 1937 for "G. G. in C.".

[9] Subs. by the A. O. 1937 for "Gazette of India".

(I.—Preliminary. II.—Manufacture, Conversion and Sale. III.—Import, Export and Transport.)

[1][the States], means any military stores to which the [2][Central Government] may from time to time, by notification in the [3][Official Gazette], specially extend such section in such part, and includes also all lead, sulphur, saltpetre and other material to which the [2][Central Government] may from time to time so extend such section:

"license" means a license granted under this Act, and "licensed" means holding such license.

[4]["States" means the territories for the time being comprised within Part A States and Part C States].

II.—Manufacture, Conversion and Sale.

5. No person shall manufacture, convert or sell, or keep, offer or expose for sale, any arms, ammunition or military stores, except under a license and in the manner and to the extent permitted thereby. Unlicensed manufacture, conversion and sale prohibited.

Nothing herein contained shall prevent any person from selling any arms or ammunition which he lawfully possesses for his own private use to any person who is not by any enactment for the time being in force prohibited from possessing the same; but every person so selling arms or ammunition to any person other than a person entitled to possess the same by reason of an exemption under section 27 of this Act shall, without unnecessary delay, give to the Magistrate of the district, or to the officer in charge of the nearest police-station, notice of the sale and of the purchaser's name and address.

III.—Import, Export and Transport.

6. No person shall bring or take [5][by sea, land or air] into or out of [1][the States] any arms, ammunition or military stores except under a license and in the manner and to the extent permitted by such license. Unlicensed importation and exportation prohibited.

Nothing in the first clause of this section extends to arms (other than cannon) or ammunition imported or exported in reasonable quantities for his own private use by any person lawfully entitled to possess such arms or ammunition; but the Collector of Customs or any other officer empowered by the [6][Central Government] in this behalf by name or in virtue of his office may at any time detain such arms or ammunition until he receives the orders of the [6][Central Government] thereon. Importation and exportation of arms and ammunition for private use.

Explanation.—Arms, ammunition and military stores taken from one part of [1][the States] to another by sea [7][or air] or across intervening territory not being part of [1][the States] are taken out of and brought into [1][the States] within the meaning of this section.

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[1] Subs. by the A. O. 1950 for "the Provinces" which had been subs. by the A. O. 1948 for "British India".

[2] Subs. by the A. O. 1937 for "G. G. in C.".

[3] Subs. by the A. O. 1937 for "Gazette of India".

[4] Added by the A. O. 1950.

[5] Subs. by the Indian Arms (Amdt.) Act, 1949 (47 of 1949), s. 3, for "by sea or by land".

[6] Subs. by the A. O. 1937 for "L. G.".

[7] Ins. by the Indian Arms (Amdt.) Act, 1949 (47 of 1949), s. 3.

(*III.—Import, Export and Transport.*)

VIII of 1878.

7. Notwithstanding anything contained in the Sea Customs Act, 1878, no arms, ammunition or military stores shall be deposited in any warehouse licensed under section 16 of that Act without the sanction of the [1][Central Government]. **Sanction of Central Government required to warehousing of arms, etc.**

8. [*Levy of duties on arms, etc., imported by sea.*] *Rep. by the Amending Act, 1891 (XII of 1891).*

9. [*Power to impose duty on import by land.*] *Rep. by the Amending Act, 1891 (XII of 1891).*

10. The [2][Central Government] may, from time to time, by notification in the [3][Official Gazette],— **Power to prohibit transport.**

(*a*) regulate or prohibit the transport of any description of arms, ammunition or military stores over [4]~~[the~~ States]~~]~~ or any part thereof, either altogether or except under a license and to the extent in the manner permitted by such license, and

(*b*) cancel any such notification.

Explanation.—Arms, ammunition or military stores transhipped at a [5][sea port or air port] in [4]~~[the States]~~ are transported within the meaning of this section. **Transhipment of arms.**

11. The [1][Central Government] [7]* * * * may, at any places along the boundary-line between [6]~~[the States]~~ and foreign territory [8]~~or between the~~ [9]~~[States]~~ ~~and~~ [10]~~[any other part of India]~~ and at such distance within such line as it deems expedient, establish searching-posts at which all vessels, carts and baggage-animals, and all boxes, bales and packages in transit, may be stopped and searched for arms, ammunition and military stores by any officer empowered by [11][the Central Government] in this behalf by name or in virtue of his office. **Power to establish searching stations.**

12. When any person is found carrying or conveying any arms, ammunition or military stores, whether covered by a license or not, in such manner or under such circumstances as to afford just grounds of suspicion that the same are being carried by him with intent to use them, or that the same may be used, for any unlawful purpose, any person may without warrant apprehend him and take such arms, ammunition or military stores from him. **Arrest of persons conveying arms, etc., under suspicious circumstances.**

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1 Subs. by the A. O. 1937 for "L. G.".
2 Subs. by the A. O. 1937 for "G. G. in C.".
3 Subs. by the A. O. 1937 for "Gazette of India".
4 Subs. by the A. O. 1950 for "all the Provinces of India" which had been subs. by the A. O. 1948 for "the whole of British India".
5 Subs. by the Indian Arms (Amendment) Act 1949 (47 of 1949), s. 4, for "port".
6 *See* footnote 1 on pre-page.
7 The words "with the previous sanction of the G. G. in C." rep. by the A. O. 1937.
8 Ins. by the A. O. 1948.
9 Subs. by the A. O. 1950 for "Provinces".
10 Subs. by the A. O. 1950 for "Acceding States".
11 Subs. by the A. O. 1937 for "such Govt.".

(III.—Import, Export and Transport. IV.—Going armed and possessing Arms, etc.)

Procedure where arrest made by person not Magistrate or Police-officer.

Any person so apprehended, and any arms, ammunition or military stores so taken by a person not being a Magistrate or Police-officer, shall be delivered over as soon as possible to a Police-officer.

All persons apprehended by, or delivered to, a Police-officer, and all arms and ammunition seized by or delivered to any such officer under this section, shall be taken without unnecessary delay before a Magistrate.

IV.—Going armed and possessing Arms, etc.

Prohibition of going armed without license.

13. No person shall go armed with any arms except under a license and to the extent and in the manner permitted thereby.

Any person so going armed without a license or in contravention of its provisions may be disarmed by any Magistrate, Police-officer or other person empowered by the [1][Central Government] in this behalf by name or by virtue of his office.

Unlicensed possession of fire-arms, etc.

14. No person shall have in his possession or under his control any cannon or fire-arms, or any ammunition or military stores, except under a license and in the manner and to the extent permitted thereby.

[2]* * * * *

Possession of arms of any description without license prohibited in certain places.

15. In any place to which section 32, clause 2, of Act No. XXXI of 1860[3] applies at the time this Act comes into force or to which [4][the Central Government] may by notification in the [5][Official Gazette] specially extend this section, no person shall have in his possession any arms of any description, except under a license and in the manner and to the extent permitted thereby.

In certain cases arms to be

[6][**16.** (*1*) Any person possessing arms, ammunition or military stores the possession whereof has, in consequence of the cancellation or expiry of a

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[1] Subs. by the A. O. 1937 for "L. G.".

[2] The last three paras. of s. 14 were rep. by the Amending Act, 1891 (12 of 1891).

[3] Act 31 of 1860 was rep. by s. 3 of this Act.

[4] Subs. by the A. O. 1937 for "the L. G., with the previous sanction of the G. G. in C.".

[5] Subs. by the A. O. 1937 for "local official Gazette".

[6] Subs. by the Indian Arms (Amendment) Act, 1919 (20 of 1919), s. 2, for the original section.

license or of an exemption or by the issue of a notification under section 15 or otherwise, become unlawful, shall without unnecessary delay deposit the same either with the officer in charge of the nearest police-station or, at his option and subject to such conditions as the [1][Central Government] may by rule prescribe, with a licensed dealer.

deposited at police-stations or with licensed dealers.

(*2*) When arms, ammunition or military stores have been deposited under sub-section (*1*) or before the first day of January, 1920, under the provisions of any law for the time being in force, the depositor shall, at any time before the expiry of such period as the [1][Central Government] may by rule prescribe, be entitled—

(*a*) to receive back any thing so deposited the possession of which by him has become lawful, and

(*b*) to dispose, or authorize the disposal, of any thing so deposited by sale or otherwise to any person whose possession of the same would be lawful; and to receive the proceeds of any such sale:

Provided that nothing in this sub-section shall be deemed to authorize the return or disposal of any thing the confiscation of which has been directed under section 24.

(*3*) All things deposited as aforesaid and not returned or disposed of under sub-section (*2*) within the prescribed period therein referred to shall be forfeited to [2][Government].

(*4*) (*a*) The [1][Central Government] may make rules consistent with this Act for carrying into effect the provisions of this section.

(*b*) In particular and without prejudice to the generality of the foregoing provision, the [1][Central Government] may by rule prescribe—

(*i*) the conditions subject to which arms, ammunition and military stores may be deposited with a licensed dealer, and

(*ii*) the period after the expiry of which things deposited as aforesaid shall be forfeited under sub-section (*3*).]

V.—Licenses.

17. The [3][Central Government] may from time to time, by notification in the [4][Official Gazette], make rules to determine the officers by whom the

Power to make rules as to licenses.

[1] Subs. by the A. O. 1937 for "L. G.".
[2] Subs. by the A. O. 1950 for "His Majesty".
[3] Subs. by the A. O. 1937 for "G. G. in C.".
[4] Subs. by the A. O. 1937 for "Gazette of India".

form in which, and the terms and conditions on and subject to which, any license shall be granted[1]; and may by such rules among other matters—

(*a*) fix the period for which such license shall continue in force;

(*b*) fix a fee payable by stamp or otherwise in respect of any such license granted in a place to which section 32, clause 2, of Act No. XXXI of 1860[2] applies at the time this Act comes into force or in respect of any such license other than a license for possession granted in any other place;

(*c*) direct that the holder of any such license other than a license for possession shall keep a record or account, in such form as the [3][Central Government] may prescribe, of anything done under such license, and exhibit such record or account when called upon by an officer of Government to do so;

(*d*) empower any officer of Government to enter and inspect any premises in which arms, ammunition or military stores are manufactured or kept by any person holding a license of the description referred to in section 5 or section 6;

(*e*) direct that any such person shall exhibit the entire stock of arms, ammunition and military stores in his possession or under his control to any officer of Government so empowered; and

(*f*) require the person holding any license or acting under any license to produce the same, and to produce or account for the arms, ammunition or military stores covered by the same when called upon by an officer of Government so to do.

Cancelling and suspension of license.

18. Any license may be cancelled or suspended—

(*a*) by the officer by whom the same was granted, or by any authority to which he may be subordinate, or by any Magistrate of a district, or Commissioner of Police in a presidency-town, within the local limits of whose jurisdiction the holder of such license may be, when, for reasons to be recorded in writing, such officer, authority, Magistrate or Commissioner deems it necessary for the security of the public peace to cancel or suspend such license; or

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[1] For Rules as to licences, *see* the Indian Arms Rules, 1924, Genl. R. & O., Vol. II, pp. 156-258.

[2] Act 31 of 1860 was rep. by s. 3 of this Act.

[3] Subs. by the A. O. 1937 for "L. G.".

(*V.—Licenses. VI.—Penalties.*)

(*b*) by any Judge or Magistrate before whom the holder of such license is convicted of an offence against this Act, or against the rules made under this Act; and

[1][the Central Government may by a notification in the Official Gazette cancel or suspend all or any licenses throughout [2][~~[States]~~ or any part thereof].]

VI.—Penalties.

[4]**19.** Whoever commits any of the following offences (namely):— For breach of sections 5, 6, 10, 13 to 17.

(*a*) manufactures, converts or sells, or keeps, offers or exposes for sale, any arms, ammunition or military stores in contravention of the provisions of section 5;

(*b*) fails to give notice as required by the same section;

(*c*) imports or exports any arms, ammunition or military stores in contravention of the provisions of section 6;

(*d*) transports any arms, ammunition or military stores in contravention of a regulation or prohibition issued under section 10;

(*e*) goes armed in contravention of the provisions of section 13;

(*f*) has in his possession or under his control any arms, ammunition or military stores in contravention of the provisions of section 14 or section 15;

(*g*) intentionally makes any false entry in a record or account which, by a rule made under section 17, clause (*c*), he is required to keep;

(*h*) intentionally fails to exhibit anything which, by a rule made under section 17, clause (*e*), he is required to exhibit; or

(*i*) fails to deposit arms, ammunition or military stores, as required by ~~section 14 or~~ section 16;

shall be punished with imprisonment for a term which may extend to three years, or with fine, or with both.[5]

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[1]Subs. by the A. O. 1937 for "the L. G. may at its discreation, by a notification in the local official Gazette, cancel or suspend all or any licenses throughout the whole or any portion of the territories under its administration".

[2] Subs. by the A. O. 1948 for "the whole or any portion of British India".

[3] Subs. by the A. O. 1950 for "the Provinces of India".

[4] Offences under this section are bailable, *see* Code of Criminal Procedure, 1898 (Act 5 of 1898), Sch. II.

[5] After this section, a new s. 19 A, prescribing a heavier penalty for offences under cl. (*a*), (*c*), (*e*) or (*f*) of s. 19 in respect of certain arms, has been inserted in Bengal. *See* the Bengal Criminal Law (Arms and Explosives) Act, 1932 (Ben. 21 of 1932), s. 3 and the Bengal Criminal Law Amendment Act, 1934 (Ben. 7 of 1934), s. 3.

(*VI.—Penalties.*)

For secret breaches of sections 5, 6, 10, 14 and 15.

20. Whoever does any act mentioned in clause (*a*), (*c*), (*d*) or (*f*) of section 19, in such manner as to indicate an intention that such act may not be known to any public servant as defined in the Indian Penal Code, or to any person employed upon a railway or to the servant of any public carrier.

For concealing arms, etc.

and whoever, on any search being made under section 25, conceals or attempts to conceal any arms, ammunition or military stores,

shall be punished with imprisonment for a term which may extend to seven years, or with fine, or with both.[1]

For breach of license.

21. Whoever, in violation of a condition subject to which a license has been granted, does or omits to do any act shall, when the doing or omitting to do such act is not punishable under section 19 or section 20, be punished with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

For knowingly purchasing arms, etc., from unlicensed person.

22. Whoever knowingly purchases any arms, ammunition or military stores from any person not licensed or authorized under the proviso to section 5 to sell the same; or

For delivering arms, etc., to person not authorized to possess them.

delivers any arms, ammunition or military stores into the possession of any person without previously ascertaining that such person is legally authorized to possess the same,

shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

Penalty for breach of rule.

23. Any person violating any rule made under this Act, and for the violation of which no penalty is provided by this Act, shall be punished with imprisonment for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both.

Power to confiscate.

24. When any person is convicted of an offence punishable under this Act, committed by him in respect of any arms, ammunition or military stores, it shall be in the discretion of the convicting Court or Magistrate further to direct that the whole or any portion of such arms, ammunition or military stores, and any vessel, cart or baggage-animal used to convey the same, and any box, package or bale in which the same may have been concealed, together with the other contents of such box, package or bale, shall be confiscated.

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[1] A proviso, prescribing a heavier penalty for offences under this section in respect of certain arms, has been inserted in Bengal; see Ben. Act 21 of 1932, s. 4. After this section, a new s. 20A prescribing heavier penalty in certain cases has been inserted in Bengal: *see* Ben. Act 7 of 1934, s. 4.

(*VII.—Miscellaneous.*)

25. Whenever any Magistrate has reason to believe that any person residing within the local limits of his jurisdiction has in his possession any arms, ammunition or military stores for any unlawful purpose. **Search and seizure by Magistrate.**

or that such person cannot be left in the possession of any such arms, ammunition or military stores without danger to the public peace,

such Magistrate, having first recorded the grounds of his belief, may cause a search to be made of the house or premises occupied by such person or in which such Magistrate has reason to believe such arms, ammunition or military stores are or is to be found, and may seize and detain the same, although covered by a license, in safe custody for such time as he thinks necessary.

The search in such case shall be conducted by, or in the presence of, a Magistrate, or by, or in the presence of, some officer specially empowered in this behalf by name or in virtue of his office by the [1][Central Government].

26. The [1][Central Government] may at any time order or cause to be seized any arms, ammunition or military stores in the possession of any person, notwithstanding that such person is licensed to possess the same, and may detain the same for such time as it thinks necessary for the public safety. **Seizure and detention by Central Government.**

27. The [2][Central Government] may from time to time, by notification[3] published in the [4][Official Gazette],— **Power to exempt.**

(*a*) exempt any person by name or in virtue of his office, or any class of persons, or exclude any description of arms or ammunition, or withdraw any part of [5]~~[the States]~~[5] from the operation of any prohibition or direction contained in this Act; and

(*b*) cancel any such notification, and again subject the persons or things or the part of [5]~~[the States]~~[5] comprised therein to the operation of such prohibition or direction.

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[1] Subs. by the A. O. 1937 for "L. G.".

[2] Subs. by the A. O. 1937 for "G. G. in C.'.

[3] For exemptions and withdrawals under s. 27 (*a*), *see* rule 3 and Schedules I to IV of the Indian Arms Rules, 1924, Gen. R. and O., Vol. II, pp. 156-258.

[4] Subs. by the A. O. 1937 for "Gazette of India".

[5] *See* footnote 1 on p. 488, *supra*.

(*VII.—Miscellaneous.*)

Information to be given regarding offences.

28. Every person aware of the commission of any offence punishable under this Act shall, in the absence of reasonable excuse, the burden of proving which shall lie upon such person, give information of the same to the nearest Police-officer or Magistrate, and.

every person employed upon any railway or by any public carrier shall, in the absence of reasonable excuse, the burden of proving which shall lie upon such person, give information to the nearest Police officer regarding any box, package or bale in transit which he may have reason to suspect contains arms, ammunition or military stores in respect of which an offence against this Act has been or is being committed.

Sanction required to certain proceedings under section 19, clause (*f*).

29. Where an offence punishable under section 19, clause (*f*), has been committed within three months from the date[1] on which this Act comes into force in any [2][State], district or place to which section 32, clause 2, of Act XXXI of 1860[3] applies at such date, or where such an offence has been committed in any part of [4]~~[the States]~~ not being such a district, [2][State] or place, no proceedings shall be instituted against any person in respect of such offence without the previous sanction of the Magistrate of the district or, in a presidency-town, of the Commissioner of Police.

Searches in the case of offences against section 19, clause (*f*), how conducted.

30. Where a search is to be made the Code of Criminal Procedure[5] or the Presidency Magistrates Act, 1877[5], in the course of any proceedings instituted in respect of an offence punishable under section 19, clause (*f*), such search shall, notwithstanding anything contained in the said Code or Act, be made in the presence of some officer specially appointed by name or in virtue of his office by the [6][Central Government] in this behalf, and not otherwise.

Operation of other laws not barred.

31. Nothing in this Act shall be deemed to prevent any person from being prosecuted under any other law for any act or omission which constitutes an offence against this Act or the rules made under it, or from being liable

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[1] The 1st October 1878.
[2] Subs. by the A. O. 1950, for "Province".
[3] Act 31 of 1860 was rep. by s. 3 of this Act.
[4] *See* footnote 1 on p. 488, *supra*.
[5] *See* now the Code of Criminal Procedure, 1898 (5 of 1898).
[6] Subs. by the A. O. 1937 for "L. B.".

under such other law to any higher punishment or penalty than that provided by this Act: Provided that no person shall be punished twice for the same offence.

32. The [1][Central Government] may from time to time, by notification in the [2][Official Gazette], direct a census to be taken of all fire-arms in any local area, and empower any person by name or in virtue of his office to take such census. **Power to take census of fire-arms.**

On the issue of any such notification, all persons possessing any such arms in such area shall furnish to the person so empowered such information as he may require in reference thereto, and shall produce such arms to him if he so requires.

Any person refusing or neglecting to produce any such arms when so required shall be punished with imprisonment for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both.

33. No proceeding other than a suit shall be commenced against any person for anything done in pursuance of this Act, without having given him at least one month's previous notice in writing of the intended proceeding and of the cause thereof, nor after the expiration of three months from the accrual of such cause. **Notice and limitation of proceedings.**

THE FIRST SCHEDULE.—[Enactments repealed.] Rep. by the Repealing Act, 1938 (I of 1938), s 2 and Sch.

THE SECOND SCHEDULE.—[Arms, etc., liable to Duty.] Rep. by the Amending Act, 1891 (XII of 1891).

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[1] Subs. by the A. O. 1937 for "L. G.".

[2] Subs. by the A. O. 1937 for "local official Gazette".

[1][THE PUNJAB LAWS (AMENDMENT) ACT, 1878.]

ACT No. XII OF 1878.

[*28th March, 1878.*]

An Act for the further Amendment of the Punjab Laws Act, 1872. IV of 1872.

Preamble. For the purpose of further amending the Punjab Laws Act, 1872; It is hereby enacted as follows:—

1 to 6. *Repealed.*[2]

Penalty for breach of rules under Act IV of 1872

7. Whoever breaks any rule made by the [3][State Government] under the [4]same Act shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to fifty rupees, or with both. [5]* * * * *

8. [*Recovery of advances made by Government.*] *Rep. by the Amending Act, 1903 (I of 1909), s. 4 and Sch. III.*

THE HUSAINABAD ENDOWMENT ACT, 1878.

ACT No. XV OF 1878.[6]

[*5th September, 1878.*]

An Act to make better provision for the management of the Husainabad endowment at Lucknow.

Preamble. Whereas in the year 1838 the third King of Oudh, Muhammad Ali Shah, built at Lucknow a Mosque called Husainabad Mubarak for the purpose of the celebration therein of certain religious ceremonies and for the ultimate interment of himself and his mother;

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[1] Short title given by the Amending Act, 1903 (1 of 1903). For Statement of Objects and Reasons, *see* Gazette of India, 1877, Pt. V, p. 489; for Proceedings in Council, *see ibid.*, Supplement, pp. 2702, 2769 and *ibid*, 1878, p. 481.

[2] Ss. 1 and 5 have been rep. by the Repealing Act, 1938 (1 of 1938), s. 2 by the Punjab Pre-emption Act, 1905 (Punjab 2 of 1905), ss. 3 and 4 by the Punjab Court of Wards Act, 1903 (Punjab 2 of 1903), and s. 6 by the Amending Act, 1891 (12 of 1891).

[3] Subs. by the A. O. 1950 for "Provincial Government" which had been subs. by the A. O. 1937 for "L. G.".

[4] *i.e.* the Punjab Laws Act. 1872 (4 of 1872).

[5] The second sentence of s. 7 was rep. by the Amending Act, 1891 (12 of 1891), s. 2 and Sch. I.

[6] For Statement of Objects and Reasons, *see* Gazette of India, 1878, Pt. V, p. 25 and for Proceedings in Council, *see ibid*, Supplement pp. 1490 to 1492.

And whereas, on or about the twenty-third day of November 1839, the said Muhammad Ali Shah deposited the sum of twelve lakhs of Lucknow *sicca* rupees in the treasury of the late East India Company at the Residency at Lucknow;

And whereas by a deed of gift dated the 15th of the month of Ramazan in the year 1255 of the Hijra, corresponding with the said twenty-third day of November 1839, the said Muhammad Ali Shah declared that the annual interest on the said sum of twelve lakhs of rupees at the rate of four per centum per annum, together with the rent of certain shops therein referred to and the income of certain religious offerings, should be applied to the payment of the pensions of certain persons therein mentioned and their descendants (hereinafter called "the pensioners"), and to defraying the expenses of the said Mosque and the repairs of a road therein mentioned; and by the same deed the said Muhammad Ali Shah appointed two of his servents named Rafik-ud-Daulah Sayyid Imam Ali Khan Bahadur and Azimullah Khan Bahadur, and after them their descendants, generation after generation, to be Superintendents (*mutawalis*) of the said Mosque, and Sharf-ud-Daulah Muzaffar-ul-Mulk Muhammad Ibrahim Khan Bahadur Mustakim Jang, and his descendants after him, to be Agent of the pensioners only, and the expenses of the said Mosque were to be paid in perpetuity from the said treasury to the said two Superintendents and their descendants after them, and the said pensions were to be paid through the said Agent; and the said deed further provided that, in the event of failure of heirs of the said Superintendents or Agent, the British Resident for the time being at Lucknow should, with the concurrence of three-fourths of the pensioners, appoint one of their number to the vacant post. And the deed now in recital also contained the following provisions:—

"As the pensioners enumerated in this deed are objects of our peculiar consideration and favour, it is necessary that the Resident for the time being, owing to the union and friendship subsisting between the two Governments, treat them with kindness, and, considering them deserving of the support of the British Government, always afford them his aid and assistance.

"The undermentioned items of income are hereby remitted and shall be devoted to the expenses of the Husainabad Mubarak and its dependencies, and all the property in it is given by us as a gift. It shall not be optional with the sovereigns of Oudh, at any time, on any account whatsoever, to interfere in any way with it, and let the Resident for the time being, at the request of the mutawalis or Superintendents in this particular matter, give his countenance and support that this good work may continue in existence for ever;"

And whereas the items of income so referred to were the rents of certain shops attached to the said Mosque and the income from religious offerings thereto;

And whereas, on the fifth day of December 1839, Colonel Caulfield, the British Resident at Lucknow, addressed a letter to the said Muhammad Ali Shah in which he acknowledged the receipt of the said deed of gift, and stated that His Majesty might rest satisfied that every attention would be paid by the Resident to the wishes therein expressed, that his relatives would ever meet with the utmost attention, and that their interests would always be attended to by the Resident so far as his official duty permitted;

And whereas, some time after the said twenty-third day of November 1839, the said Muhammad Ali Shah added to the endowment so created Government promissory notes amounting to the sum of two millions four hundred and seventeen thousand five hundred sicca rupees, but he did not expressly declare any trusts of such further endowment;

And whereas the said notes are believed to have been in September 1841 converted into Government promissory notes for Company's rupees and to have been then endorsed in favour of the said Superintendents and the Agent;

And whereas, at some time between the same date and the month of February 1856, certain surplus-funds of the said endowment were invested in Government promissory notes, some in the names of the said Superintendents and Agent, and some in the names of the said Superintendents only;

Any whereas, after the mutiny of 1857 and the re-occupation of Lucknow, the said Mosque was found to have been stript of all its valuable property; and the promissory notes of which the said endowment then consisted were missing, and it appeared on enquiry that the said Agent had joined the mutineers and been killed during an attack on the said city, and that the said Superintendents had sold certain of the same promissory notes;

And whereas the Government of India thereupon removed the existing Superintendents from their office, and called upon the existing pensioners to appoint under the hereinbefore-recited provisions of the fourth article of the said deed of gift two other Superintendents and an Agent;

And whereas the Nawabs Muhsin-ud-Daulah and Mumtaz-ud-Daulah were accordingly appointed Superintendents, and Shahamatullah Khan was appointed Agent, and such appointments were confirmed by the then Chief Commissioner of Oudh in the year 1860;

And whereas in the meanwhile most of the promissory notes so missing as aforesaid were recovered, and of some of the others duplicates were granted by Government.

And whereas the Superintendents and Agent appointed as last aforesaid subsequently obtained from the Civil Court at Lucknow a declaration of their title to the arrears of interest which had accrued due on the promissory notes then constituting the said endowment;

And whereas, in the month of June 1864, the said promissory notes and arrears were assigned to the said Superintendents and Agent free from all restrictions;

And whereas the said Nawab Muhsin-ud-Daulah has recently died, but the said deed of gift confers no power to appoint any other person to be a Superintendent in his stead;

And whereas it is doubtful whether the aforesaid appointment of Superintendents and Agent was a regular and valid appointment, and whether there exists any person who can exercise the power of appointment conferred on the Resident by the said deed of gift;

And whereas, owing to the changes which have happened since the death of the said Muhammad Ali Shah, it is expedient to provide for the management of the said endowment in manner hereinafter appearing;

And whereas it is also expedient to indemnify all persons for anything done before the passing of this Act which might lawfully have been done if the said appointments of the said Nawabs and Shahamatullah Khan had been valid;

It is hereby enacted as follows:—

Power to appoint trustees of endowment.

1. The [1][State Government] may call upon the pensioners and such of the descendants of the said Muhammad Ali Shah as may for the time being reside at Lucknow to nominate so many persons, not less than six in number, as they or a majority of them think fit, to be trustees of the said endowment; and may appoint three of the persons so nominated to be such trustees:

Provided that the said Nawab Mumtaz-ud-Daulah shall be one of the persons nominated and appointed as aforesaid.

Power to appoint in place of trustee dying etc.

2. If any of the said trustees dies, or is desirous of being discharged, or refuses or becomes incapable to act, or is declared an insolvent, or is guilty of any misconduct which in the opinion of the [1][State Government] disqualifies him to be a trustee, then and so often the [1][State Government] may call upon the pensioners and such descendants to nominate so many persons, not less than two in number, as they or a majority of them think fit,

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[1] Subs. by the A. O. 1950 for "Provincial Government" which had been subs. by the A. O. 1937 for "L. G.".

to be trustees of the said endowment, and may appoint one of the persons so nominated to be a trustee in the stead of the trustee so dying or desiring to be discharged, or refusing or becoming incapable to act, or declared an insolvent, or deemed disqualified.

Appointment in default of nomination.

3. If the pensioners and such descendants, on being called upon under section one or section two to nominate, fail to do so within one month from the date on which they are so called upon, the [1][State Government] may (except as provided in respect of the said Nàwab Mumtaz-ud-Daulah in section one) appoint such persons as it thinks fit to be trustees of the said endowment: Provided that the number of the trustees shall not in the whole exceed three.

Notification of appointment of trustees.

4. The appointment of trustees under this Act shall be effected by a notification in the [2][Official Gazette], and the appointee shall become a trustee on the date fixed in the notification, or if no date is fixed, from the day after its appearance in such Gazette.

Validity of such appointment.

5. The validity of any such appointment so notified shall not be questioned in any Court of Justice.

Devolution of property.

6. After the first appointment of trustees under this Act, the whole property of the endowment shall, for the purposes of the endowment, always be vested in the whole body of trustees for the time being.

Management.

7. The trustees for the time being under this Act shall, for the purposes of the endowment, have the entire management of the property and affairs of the endowment, and shall be responsible for the due conduct of such affairs.

In the event of any difference of opinion among the trustees, the decision of the majority of them shall prevail; and such majority may, on behalf of themselves and their co-trustee, execute all such assurances as may be requisite for carrying into effect any lease or other disposition of any property of the endowment.

Trustees to appoint Secretary.

8. With the previous sanction of the [1][State Government], the said trustees may from time to time appoint some person, not being one of their own body, to act as their Secretary, to keep their accounts, conduct their correspondence and perform other ministerial duties, and may suspend or dismiss any person so appointed.

Every person so appointed shall, so long as he continues to act as Secretary, be entitled to receive from the trustees such salary not less than one hundred rupees per mensem as the trustees, with the previous sanction of the [1][State Government], may direct.

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[1] Subs. by the A. O. 1950 for "Provincial Government" which had been subs. by the A. O. 1937 for "L. G.".

[2] Subs. by the A. O. 1937 for "local official Gazette".

Power of Government to appoint in certain cases.

9. If the said trustees, on being called upon by the [1][State Government], when the office of Secretary is vacant, to nominate a Secretary under section eight, fail to do so within one month from the date on which they are so called upon, the [1][State Government] may appoint such person as it thinks fit to be Secretary; and every person so appointed shall, so long as he continues to act as Secretary, be entitled to receive from the trustees such salary as the [1][State Government] may direct.

Power of Government to dismiss Secretary.

10. The [1][State Government] may in its discretion dismiss any Secretary appointed under section eight or section nine who is guilty of any misconduct which, in the opinion of the [1][State Government], disqualifies him to be Secretary.

Receipts of trustees.

11. The receipts of the said trustees for any monies or securities which may be paid or transferred to them in pursuance of this Act or the trusts thereof shall discharge the person paying or transferring the same therefrom and from being concerned to see to the application thereof, or being accountable for the non-application or misapplication thereof.

Indemnity of trustees.

12. The said trustees shall be chargeable only with such monies and securities as they respectively actually receive, and shall not be answerable the one for the other of them, nor for any banker, broker or other person in whose hands any of the property of the endowment may be placed; nor for the insufficiency or deficiency of any securities, nor otherwise for any loss or misapplication of the said property, unless the same is occasioned by or through their own wilful neglect or default; and they may reimburse themselves out of the said property all expenses properly incurred in or about the execution of their trust.

Power to call for accounts and information.

13. The [1][State Government] may from time to time require the said trustees to render such accounts and other information respecting the said endowment as it thinks fit; and any trustee failing to comply with such requisition, or furnishing false information respecting such endowment, shall be deemed to have committed an offence under section 175, section 176 or section 177 (as the case same may be) of the Indian Penal Code.

XLV of 1860.

Indemnity-clause.

14. All officers and other persons are hereby indemnified for anything done before the passing of this Act which might lawfully have been done if the hereinbefore-recited appointments of the said Nawabs and Shahmatullah Khan had been valid; and no suit or other proceeding shall be maintained against any such officer or other person in respect of anything so done.

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[1] *See* **footnote 1 on p. 502,** ***supra.***

THE NORTHERN INDIA FERRIES ACT, 1878.

CONTENTS.

PREAMBLE.

I.—PRELIMINARY.

SECTIONS.

1. Short title.

Local extent.

Commencement.

2. [*Repealed.*]

3. Interpretation-clause.

II.—PUBLIC FERRIES.

4. Power to declare, establish, define and discontinue public ferries.

5. Claims for compensation.

6. Superintendence of public ferries.

7. Management may be vested in municipality.

7A. Management may be vested in District Council or District or Local Board.

8. Letting ferry-tolls by auction.

9. Recovery of arrears from lessee.

10. Power to cancel lease.

11. Surrender of lease.

12. Power to make rules.

13. Private ferry not to ply within two miles of public ferry without sanction.

14. Person using approaches, etc., liable to pay toll.

SECTIONS.

15. Tolls.

16. Table of tolls.

List of tolls.

17. Tolls, rents, compensation and fines are to form part of revenues of Province.

18. Compounding for tolls.

III.—PRIVATE FERRIES.

19. Power to make rules.

20. Tolls.

IV.—PENALTIES AND CRIMINAL PROCEDURE.

21. Penalty for breach of provisions as to table of tolls, list of tolls and return of traffic.

22. Penalty for taking unauthorised toll, and for causing delay.

23. Penalty for breach of rules made under sections 12 and 19.

24. Cancelment of lease on default or breach of rules.

25. Penalties on passengers offending.

26. Penalty for maintaining private ferry within prohibited limits.

27. Fines payable to lessee.

28. Penalty for rash navigation and stacking of timber.

29. Power to arrest without warrant.

30. Power to try summarily.

31. Magistrate may assess damage done by offender.

V.—MISCELLANEOUS.

32. Power to take possession of boats, etc., on surrender or cancellation of lease.

33. Similar power in cases of emergency.

34. Jurisdiction of Civil Courts barred.

35. Delegation of powers.

36. [*Repealed.*]

(*I.—Preliminary.*)

ACT No. XVII of 1878.[1]

[*9th November 1878.*]

An Act to regulate Ferries in Northern India.

Preamble.

WHEREAS it is expedient to regulate ferries in [2][the United Provinces, East Punjab, the Central Provinces, Assam, Delhi and Ajmer-Merwara]; It is hereby enacted as follows:—

I.—PRELIMINARY.

Short title.

1. This Act may be called the Northern India Ferries Act, 1878.

Local extent.

[3][It extends only to Uttar Pradesh, Punjab, the Central Provinces, Assam, Delhi and Ajmer].

Commencement.

It shall come into force in each of the said territories on such date[4] as the [5][State Government] may, by notification in the Official Gazette, fix in this behalf.

2. [*Repeal*] *Rep. by the Repealing Act, 1938 (I of 1938), s. 2 and Sch.*

Interpretation-clause.

3. In this Act the word "ferry" includes also a bridge of boats, pontoons or rafts, a swing-bridge, a flying-bridge and a temporary bridge, and the approaches to, and landing-places of, a ferry.

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[1] For Statement of Objects and Reasons, *see* Gazette of India, 1878, Pt. V, p. 135, for Preliminary Report of the Select Committee, *see ibid.*, p. 210; for Proceedings in Council, *see ibid.* Supplement, pp. 286, 325, 1104 and 1194.

This Act applies to the Lakhimpur Frontier Tract, and to the Sadiya and Balipara Frontier Tracts in Assam, subject to certain modifications, *see* Assam Govt. notification No. 442-GS & 443-GS, dated 26th January, 1940.

It has been amended in—

C. P. by Acts 1 of 1883, 12 of 1891, 4 of 1907, C. P. Acts 1 of 1931 and 23 of 1937;

Punjab by Acts 20 of 1883 and 12 of 1891;

U. P. by U. P. Acts 1 of 1914 and 29 of 1948;

Sambalpur District by Acts 1 of 1883, 12 of 1891, Bengal Act 1 of 1911 and Orissa Act 6 of 1939;

Coorg by Coorg Act 6 of 1940; and

Ajmer by Act 6 of 1945

[2] Subs. by the A. O. 1948 for "the Punjab, the North-Western Provinces, Oudh, Central Provinces, Assam, and Ajmer and Merwara".

[3] Successively amended by A. O. 1948 and A. O. 1950 to read as above.

[4] The Act was brought into force in—

the Punjab on 1st April 1881: *see* Punjab Gazette, 1881, Pt. I, p. 139.

the U. P. on 1st January, 1879: *see* North-Western Provinces and Oudh Gazette, 1878, Pt. I, p. 2035.

Assam on 1st April 1879, *see* Assam Gazette, 1879, Pt. I, p. 187.

[5] *See* footnote 1 on p. 502, *supra*.

(*II.—Public Ferries.*)

II.—Public Ferries.

Power to declare, establish, define, and discontinue public ferries.

4. The [1][State Government] may from time to time—

(*a*) declare what ferries shall be deemed public ferries, and the respective districts in which, for the purposes of this Act, they shall be deemed to be situate;

(*b*) take possession of a private ferry and declare it to be a public ferry;

(*c*) establish new public ferries where, in its opinion, they are needed;

(*d*) define the limits of any public ferry;

(*e*) change the course of any public ferry; and

(*f*) discontinue any public ferry which it deems unnecessary.

Every such declaration, establishment, definition, change or discontinuance shall be made by notification in the Official Gazette:

[2][Provided that, when a river lies between two [3][States], the powers conferred by this section shall, in respect of such river, be exercised jointly by the [4][State Governments] of those [3][States] by notifications in their respective Official Gazettes [5]* * * *].

Provided also that, when any alteration in the course or in the limits of a public ferry is rendered necessary by changes in the river, such alteration may be made, by an order under his hand, by the Commissioner of the Division in which such ferry is situate, or by such other officer as the [1][State Government] may, from time to time, appoint by name or in virtue of his office in this behalf.

Claims for compensation.

5. Claims for compensation for any loss sustained by any person in consequence of a private ferry being taken possession of under section 4 shall be inquired into by the Magistrate of the district in which such ferry is situate, or such officer as he appoints in this behalf, and submitted for the consideration and orders of the [1][State Government].

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[1] Subs. by the A. O. 1950 for "Provincial Govt." which had been subs. by the A. O. 1937 for "L. G.".

[2] Subs. by the Devolution Act, 1920 (38 of 1920), for the original proviso.

[3] Subs. by the A. O. 1950 for "Provinces".

[4] Subs. by the A. O. 1950 for "Provincial Governments" which had been subs. by the A. O. 1937 for "Local Governments".

[5] The words "and in any case where the said Local Governments fail to agree as regards the exercise of any such power they shall exercise such power subject to the control of the G. G. in C." rep. by the A. O. 1937.

(*II.—Public Ferries.*)

Superintendence of public ferries.

6. The immediate superintendence of every public ferry shall, except as provided in section 7 [1][and section 7A], be vested in the Magistrate of the district in which such ferry is situate, or in such other officer as the [2][State Government] may, from time to time, appoint by name or in virtue of his office in this behalf,

and such Magisrtate or officer shall, except when the tolls at such ferry are leased, make all necessary arrangements for the supply of boats for such ferry, and for the collection of the authorised tolls leviable thereat.

Management may be vested in municipality.

7. The [2][State Government] may direct that any public ferry situate within the limits of a town be managed by the officer or public body charged with the superintendence of the municipal arrangements of such town;

[3][and thereupon that ferry shall be managed accordingly.]

Management may be vested in District Council or District or Local Board.

[4][**7A.** The [5][State] Government may direct that any public ferry, wholly or partly within the area subject to the authority of a District Council or a District Board or a Local Board in the [6][State] be managed by that Council or Board, and thereupon that ferry shall be managed accordingly.]

Letting ferry tolls by auction.

[7][**8.** The tolls of any public ferry may, from time to time be let by public auction for a term not exceeding five years with the approval of the Commissioner, or by public auction, or otherwise than by public auction, for any term with the previous sanction of the [2][State Government].

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[1] Ins., in the application of the Act to—
The U. P by the U. P. Local Boards Act, 1883 (14 of 1883), s. 65.
The Punjab, by the Punjab District Boards Act, 1883 (20 of 1883), s. 79.
The C. P., by the C. P. Local Self-Government Act, 1883 (1 of 1883), s. 44; and
Assam, by the Assam Local Self-Government (Amendment) Act, 1926 (Assam 8 of 1926), s. 43.
The words are not applicable to Ajmer-Merwara.

[2] Subs. by the A. O. 1950 for "Provincial Govt." which had been subs. by the A. O. 1937 for "L. G.".

[3] Subs. by the A. O. 1937 for the following words:—
"and may further direct that all or any part of the proceeds from such ferry be paid into the municipal fund of such town;
and thereupon such ferry shall be managed, and such proceeds or part thereof shall be paid, accordingly."

[4] Subs. by the A. O. 1937 for s. 7A inserted by the Acts mentioned in foot-note 1 above. The section is inapplicable to Ajmer-Merwara.

[5] Subs. by the A. O. 1950 for "Provincial".

[6] Subs. by the A. O. 1950 for "Province."

[7] Subs. by the Northern India Ferries Act Amendment Act, 1886 (3 of 1886), s. 1, for the original s. 8.

(*II.—Public Ferries.*)

The lessee shall conform to the rules made under this Act for the management and control of the ferry, and may be called upon by the officer in whom the immediate superintendence of the ferry is vested, or, if the ferry is managed by a municipal or other public body under section 7 [1]or section 7A, then by that body, to give such security for his good conduct and for the punctual payment of the rent as the officer or body, as the case may be, thinks fit.

When the tolls are put up to public auction, the said officer or body, as the case may be, or the officer conducting the sale on his or its behalf, may, for reasons recorded in writing, refuse to accept the offer of the highest bidder, and may accept any other bid, or may withdraw the tolls from auction.]

Recovery of arrears from lessee.

9. All arrears due by the lessee of the tolls of a public ferry on account of his lease may be recovered from the lessee or his surety (if any) by the Magistrate of the district in which such ferry is situate as if they were arrears of land-revenue.

Power to cancel lease

10. The [2][State Government] may cancel the lease of the tolls of any public ferry on the expiration of six months' notice in writing to the lessee of its intention to cancel such lease.

When any lease is cancelled under this section, the Magistrate of the district in which such ferry is situate shall pay to the lessee such compensation as such Magistrate may, with the previous sanction of the [2][State Government], award.

Surrender of lease.

11. The lessee of the tolls of a public ferry may surrender his lease on the expiration of [3][one month's] notice in writing to the [2][State Government] of his intention to surrender such lease, and on payment to the Magistrate of the district in which such ferry is situate of such compensation as such Magistrate, subject to the approval of the Commissioner, may in each case direct.

Power to make rules.

12. Subject to the control of the [2][State Government] the Commissioner of a division, or such other officer as the [2][State Government] may, from time to time, appoint in this behalf, by name or in virtue of his office, may, from time to time, make rules consistent with this Act—

(*a*) for the control and the management of all public ferries within such division and for regulating the traffic at such ferries;

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[1] The words "or section 7A" are inapplicable to Ajmer-Merwara.

[2] *See* footnote 1 on p. 502, *supra*.

[3] *Read*: "three months'" in U.P.—*vide* U.P. Act 29 of 1948, s. 2.

[1][(*b*) for regulating the time and manner at and in which, and the terms on which, the tolls of such ferries may be let by auction, and prescribing the persons by whom auctions may be conducted;]

(*c*) for compensating persons who have compounded for tolls payable for the use of any such ferry when such ferry has been discontinued before the expiration of the period compounded for; and

(*d*) generally to carry out the purposes of this Act;

and, when the tolls of a ferry have been let under section 8, such Commissioner or other officer may, from time to time (subject as aforesaid), make additional rules consistent with this Act—

(*e*) for collecting the rents payable for the tolls of such ferries;

(*f*) in cases in which the communication is to be established by means of a bridge of boats, pontoons or rafts, or a swing-bridge, flying-bridge or temporary bridge, for regulating the time and manner at and in which such bridge shall be constructed and maintained and opened for the passage of vessels and rafts through the same, and

(*g*) in cases in which the traffic is conveyed in boats, for regulating (1) the number and kind of such boats and their dimensions and equipment, (2) the number of the crew to be kept by the lessee for each boat; (3) the maintenance of such boats continually in good condition; (4) the hours during which, and the intervals within which, the lessee shall be bound to ply; and (5) the number of passengers, animals and vehicles, and the bulk and weight of other things, that may be carried in each kind of boat at one trip.

The lessee shall make such returns of traffic as the Commissioner or other officer as aforesaid may, from time to time, require.

Private ferry not to ply within two miles of public ferry without sanction.

13. [2][Except with the sanction of the Magistrate of the district or of such other officer as the [3][State Government] may, from time to time, appoint in this behalf, by name or in virtue of his office, no person shall establish, maintain or work a ferry to or from any point within a distance of two miles from the limits of a public ferry]:

Provided that, in the case of any specified public ferry, the [3][State Government] may, by notification in the Official Gazette, reduce or increase the said distance of two miles to such extent as it thinks fit:

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[1] Subs. by the Northern India Ferries Act Amendment Act, 1886 (3 of 1886), s. 1 (2), for the original clause (*b*).

[2] Subs. by Act 3 of 1886, s. 2 (*1*), for the original para.

[3] *See* footnote 1 on p. 502, *supra*.

(*II.—Public Ferries.*)

Provided also that nothing hereinbefore contained shall prevent persons plying between two places, one of which is without, and one within, the said limits, when the distance between such two places is not less than three miles, or apply to boats [1][which do not ply for hire, or] which the [2][State Government] expressly exempts from the operation of this section[3].

14. Whoever uses the approach to, or landing-place of, a public ferry is liable to pay the toll payable for crossing such ferry. **Person using approaches, etc., liable to pay toll.**

15. [4]Tolls, according to such rates as are, from time to time, fixed by the [2][State Government], shall be levied on all persons, animals, vehicles and other things crossing any river by a public ferry and not employed or transmitted on the public service: **Tolls.**

Provided that the [2][State Government] may, from time to time, declare that any persons, animals, vehicles or other things shall be exempt from payment of such tolls.

Where the tolls of a ferry have been let under section 8, any such declaration, if made after the date of the [5][lease], shall entitle the lessee to such abatement of the rent payable in respect of the tolls as may be fixed by the Commissioner of the division or such other officer as the [2][State Government] may, from time to time, appoint in this behalf by name or in virtue of his office.

16. The lessee or other person authorised to collect the tolls of any public ferry shall affix a table of such tolls, legibly written or printed in the vernacular language and, also if the Commissioner of the division so directs, in English in some conspicuous place near the ferry, **Table of tolls.**

and shall be bound to produce, on demand, a list of the tolls, signed by the Magistrate of the district or such other officer as he appoints in this behalf. **List of tolls.**

[6]**[17.** All tolls, rents, compensation and fines under this Act (other than tolls received by any lessee) shall form part of the revenues of the [7][State]. **Tolls, rents, compensation and fines are to form part of revenues of State.**

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[1] Ins. by the Northern India Ferries Act Amendment Act, 1886 (3 of 1886). s. 2 (2).

[2] *See* footnote 1 on p. 502, *supra*.

[3] An explanation has been added to s. 13 in the C. P. by the Northern India Ferries (C. P. Amendment) Act, 1937 (C. P. 23 of 1937).

[4] So much of s. 15 is repealed as provides for the exemption from tolls of any person, animals, vehicles or other things exempted by s. 3 of the Indian Tolls (Army) Act, 1901 (2 of 1901); *see* s. 8 of that Act.

[5] Subs. by Act 3 of 1886, s. 1 (3) for "auction".

[6] Subs. by the A. O. 1937 for the original s. 17.

[7] Subs. by the A. O. 1950 for "Province".

(*II.—Public Ferries. III.—Private Ferries. IV.—Penalties and Criminal Procedure.*)

Compounding for tolls.

18. The [1][State Government] may, if it thinks fit, from time to time, fix rates at which any person may compound for the tolls payable for the use of a public ferry.

III.—PRIVATE FERRIES.

Power to make rules.

19. The Commissioner of the division may, with the previous sanction of the [1][State Government], from time to time, make rules for the maintenance of order and for the safety of passengers and property at ferries other than public ferries.

Tolls.

20. The tolls charged at such ferries shall not exceed the highest rates for the time being fixed under section 15 for similar public ferries.

IV.—PENALTIES AND CRIMINAL PROCEDURE.

Penalty for breach of provisions as to table of tolls, list of tolls and return of traffic.

21. Every lessee or other person authorised to collect the tolls of a public ferry, who neglects to affix and keep in good order and repair the table of tolls mentioned in section 16,

or who wilfully removes, alters or defaces such table, or allows it to become illegible,

or who fails to produce on demand the list of the tolls mentioned in section 16,

and every lessee who neglects to furnish any return required under section 12,

shall be punished with fine which may extend to fifty rupees.

Penalty for taking unauthorised toll, and for causing delay.

22. Every such lessee or other person as aforesaid and any person in possession of a private ferry asking or taking more than the lawful toll, or without due cause delaying any person, animal, vehicle or other thing, shall be punished with fine which may extend to one hundred rupees.

Penalty for breach of rules made under sections 12 and 19.

23. Every person breaking any rule made under section 12 or section 19 shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to two hundred rupees, or with both.

Cancelment of lease on default or breach of rules.

24. When any lessee of the tolls of a public ferry makes default in the payment of the rent payable in respect of such tolls, or has been convicted of an offence under section 23, or, having been convicted of an offence under section 21 or section 22, is again convicted of an offence under either of those sections,

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[1] *See* footnote 1 on p. 502, *supra*.

(IV.—Penalties and Criminal Procedure.)

the Magistrate of the district may, with the sanction of the Commissioner of the division, cancel the lease of the tolls of such ferry, and make other arrangements for its management during the whole or any part of the term for which the tolls were let.

Penalties on passengers offending.

25. Every person crossing by any public ferry, or using the approach to, or landing place thereof, who refuses to pay the proper toll, and every person—

who, with intent to avoid payment of such toll, fraudulently or forcibly crosses by any such ferry without paying the toll, or

who obstructs any toll-collector or lessee of the tolls of a public ferry or any of his assistants in any way in the execution of their duty under this Act, or

who, after being warned by any such toll-collector, lessee or assistant not to do so, goes or takes any animals, vehicles or other things into any ferry-boat, or upon any bridge at such a ferry, which is in such a state or so loaded as to endanger human life or property, or

who refuses or neglects to leave, or remove any animals, vehicles or goods from, any such ferry-boat or bridge, on being requested by such toll-collector, lessee or assistant to do so,

shall be punished with fine which may extend to fifty rupees.

Penalty for maintaining private ferry within prohibited limits.

[1][**26.** Whoever establishes, maintains or works a ferry in contravention of the provisions of section 13 shall be punished with fine which may extend to five hundred rupees, and with a further fine which may extend to one hundred rupees for every day during which the ferry is maintained or worked in contravention of those provisions.]

Fines payable to lessee.

27. Where the tolls of any public ferry have been let under the provisions hereinbefore contained, the whole or any portion of any fine realised under section 25 or section 26 may, notwithstanding anything contained in section 17, be at the discretion of the convicting Magistrate or Bench of Magistrates, paid to the lessee.

Penalty for rash navigation and stacking of timber.

28. Whoever navigates, anchors, moors or fastens any vessel or raft, or stacks any timber, in a manner so rash or negligent as to damage a public ferry shall be punished with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both; and the toll-collector or lessee of the tolls of such ferry, or any of his assistants, may seize and detain such vessel, raft or timber pending the inquiry and assessment hereinafter mentioned.

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[1] Subs. by the Northern India Ferries Act Amendment Act, 1886 (3 of 1886), s. 2 (3), for the original s. 26.

(*IV.—Penalties and Criminal Procedure. V.—Miscellaneous.*)

Power to arrest without warrant.

29. The police may arrest without warrant any person committing an offence against section 25 or section 28.

Power to try summarily.

30. Any Magistrate or Bench of Magistrates having summary jurisdiction under Chapter XVIII of the [1]Code of Criminal Procedure, may try any offence against this Act in manner provided by that Chapter.

Magistrate may assess damage done by offender.

31. Every Magistrate or Bench of Magistrates trying any offence under this Act may inquire into and assess the value of the damage (if any) done or caused by the offender to the ferry concerned, and shall order the amount of such value to be paid by him in addition to any fine imposed upon him under this Act; and the amount so ordered to be paid shall be leviable as if it were a fine, or, when the offence is one under section 28, by the sale of the vessel, raft or timber causing the damage, and of any thing found in or upon such vessel or raft.

The Commissioner of the division may, on the appeal of any person deeming himself agrieved by an order under this section, reduce or remit the amount payable under such order.

V.—MISCELLANEOUS.

Power to take possession of boats, etc., on surrender or cancellation of lease.

32. When the lease of the tolls of any ferry is surrendered under section 11 or cancelled under section 24, the Magistrate of the district may take possession of all boats and their equipment and all other material and appliances used by the lessee for the purposes of such ferry, and use the same (paying such compensation for the use thereof as the [2][State Government] may in each case direct) until such Magistrate can conveniently procure proper substitutes therefor.

Similar power in cases of emergency.

33. When any boats or their equipment or any materials or appliances suitable for setting up a ferry, are emergently required for facilitating the transport of officers, or troops of [3][the Government of India] on duty, or of any other persons on the business of [4][Government], or of any animals, vehicles or baggage belonging to such officers, troops or persons or of any property of [4][Government], the Magistrate of the district may take possession of and use the same (paying such compensation for the use thereof as [5][the Central Government, where the transport is in connection with the affairs of the Central Government, and the [6][State] Government in other cases] may in each case direct) until such transport is completed.

Jurisdiction of Civil Courts barred.

34. No suit to ascertain the amount of any compensation payable, or abatement of rent allowable, under this Act shall be cognizable by any Civil Court.

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[1] *See* now the Code of Criminal Procedure, 1898 (5 of 1898), Ch. 22.
[2] *See* footnote 1 on p. 502, *supra*.
[3] Subs. by the A. O. 1950 for "Her Majesty".
[4] Subs. by the A. O. 1950 for "Her Majesty".
[5] Subs. by the A. O. 1937 for "the L. G.".
[6] Subs. by the A. O. 1950 for "Provincial".

35. The [1][State Government] may, from time to time, delegate, under such restrictions as it thinks fit, any of the powers conferred on it by this Act to any Commissioner of a division or Magistrate of a district, or to such other officer as it thinks fit, by name or by virtue of his office. Delegation of powers

36. [*Validation of proceedings since repeal of Regulation VI of 1891 in Punjab*] *Rep. by the Amending Act, 1891 (XII of 1891).*

THE ELEPHANTS' PRESERVATION ACT, 1879.

ACT No. VI of 1879.[2]

[*22nd March, 1879.*]

An Act for the preservation of wild elephants.

WHEREAS it is expedient to provide for the preservation of wild elephants; It is hereby enacted as follows:— Preamble.

1. This Act may be called the Elephants' Preservation Act, 1879: Short title.

It extends to the territories now respectively administered by the Lieutenant-Governor of the North-Western Provinces and the Chief Commissioners of Oudh, the Central Provinces, [3]* * * and Coorg; Local extent.

and the [4][Government of a Part A State or a Part C State] may, [5] * * * * extend it to any other local area[6] by notification in the [7][Official Gazette].

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[1] *See* footnote 1 on p. 502. *supra.*

[2] For the Statement of Objects and Reasons, *see* Gazette of India, 1878, Pt. V, p. 199; for the Preliminary Report of the Select Committee, *see ibid.*, Pt. V, p. 387; for discussions in Council, *see ibid.*, 1878, Supplement, pp. 1103, 1855; and *ibid.*, 1879, Supplement, pp. 348, 350.

This Act has been declared to be in force in the Angul District by the Angul Laws Regulation 1936 (5 of 1936).

It has been amended in its application to Bengal by the Elephants Preservation (Bengal Amendment) Act, 1932 (Ben. 5 of 1932), and in its application to the district of Sambalpur and Agency tracts of Ganjam and Koraput by the Elephants' Preservation (Amendment) Regulation, 1938 (Orissa Reg. 1 of 1938).

[3] The words "British Burma" rep. by the A. O. 1937.

[4] Subs. by the A. O. 1950 for "Provincial Government" which had been subs. by the A. O. 1937 for "L. G.".

[5] The words "with the previous sanction of the G. G. in C." rep. by the Devolution Act, 1920 (38 of 1920), s. 2 and Sch. I.

[6] The Act has been extended to the following places, namely:—

Kila Sukindah, in Cuttack, *see* Calcutta Gazette, 1882, Pt. I, p. 278,

the District of Midnapur, *see* Ben. R. and O.;

the Districts of Kamrup, Darran, Naugong, Sibsagar, Lakhimpur, Cachar, the Naga Hills and the Khasi and Jaintia Hills, *see* Assam Gazette, 1880, p. 340;

the Garo Hills (with the exception of certain portions of the estates of the zamindar of Bijni), *see* Assam Gazette, 1899, Pt. II, p. 431;

the Eastern Duars in the district of Goalpara, *see* Assam Gazette, 1883, Pt. I, p. 2; the Makokehand Sub-division of the Naga Hills District, *see* Notification No. 168-J., printed, Assam Gazette, 1891, Pt. II, p. 36; the Lushai Hills, *see* Gazette of India, 1898, Pt. II, p. 345, Notification No. 923-P., dated April 4, 1898.

[7] Subs. by the A. O. 1937 for "local official Gazette".

Commencement.

So far as regards the power to make declarations and rules, it shall come into force on the passing thereof. In other respects it shall come into force on the first day of April 1879.

2. [*Repeal.*] *Rep. by the Repealing and Amending Act, 1930 (VIII of 1930), s. 3 and Sch. II.*

Killing and capture of wild elephants prohibited.

3. No person shall kill, injure or capture, or attempt to kill, injure or capture, any wild elephant unless—

(*a*) in defence of himself or some other person;

(*b*) when such elephant is found injuring houses or cultivation, or upon, or in the immediate vicinity of, any main public road or any railway or canal; or

(*c*) as permitted by a license granted under this Act.

Rights of Government with respect to certain elephants and tusks.

[1][**4.** Every wild elephant captured, and the tusks of every wild elephant killed, by any person not licensed under this Act, shall be the property of Government.]

Licence to kill and capture wild elephants.

5. The Collector or Deputy Commissioner of any district may, subject to such rules as may for the time being be in force under this Act, grant licenses to kill, or to capture, or to kill and capture, wild elephants in such district.

Provided that no such license shall authorize any person to enter upon any land without the consent of the owner or occupier thereof.

Power of State Government to declare what are main roads and canals, and to make rules as to licenses.

6. The [2][State Government] may from time to time[3] * * * * declare what shall be deemed to be main public roads and canals within the meaning of this Act, and

make rules consistent with this Act for regulating—

(*a*) the grant and renewal of licenses under this Act;

(*b*) the fees (if any) in money, tusks or captured elephants to be charged on such grant and renewal;

(*c*) the time during which such licenses shall continue in force; and

(*d*) the conditions (if any) on which they shall be granted.

All such declarations and rules shall be published in the [4][Official Gazette] and shall thereupon have the force of law.

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[1] Subs. by the Elephants' Preservation Act (1879) Amendment Act, 1883 (2 of 1883), for the original section.

[2] *See* footnote 1 on p. 502, *supra*.

[3] The words "subject to the control of the G. G. in C." rep. by the Devolution Act, 1920 (38 of 1920), s. 2 and Sch. I.

[4] Subs. by the A. O. 1937 for "local official Gazette".

7. Whoever, in contravention of section 3, kills, injures or captures, or attempts to kill, injure or capture, any wild elephant, shall be punished with fine which may extend to five hundred rupees for each elephant concerned; **Penalty for contravening section 3.**

and whoever breaks any condition contained in a license granted under this Act shall be punished with fine which may extend to five hundred rupees.

Any person convicted of a second offence under this section shall be punished with imprisonment which may extend to six months, or with fine, or with both.

When any person holding a license under this Act is convicted under this section, such license shall become void and shall be delivered up to the convicting Magistrate.

8. Any officer of Revenue or Police, or any Forest-officer, who may find any person killing, injuring or capturing, or attempting to kill, injure or capture, any wild elephant, except in the cases mentioned in section 3, clauses (*a*) and (*b*), may require him to produce and show a license granted to him under this Act. **License to be produced and shown on requisition of certain officers.**

Any person who, on such request, wilfully refuses or is unable to produce and show such license as aforesaid, shall, in addition to any other punishment to which he may be liable under this Act, be punished with fine which may extend to one hundred rupees.

9. Every prosecution under this Act shall be commenced within six months from the commission of the offence in respect of which it is instituted. **Limitation of prosecution.**

10. The amount or value of any fee payable under any license granted under this Act may be recovered from the licensee as if it were an arrear of land-revenue. **Recovery of fees.**

THE HACKNEY-CARRIAGE ACT, 1879.

ACT No. XIV of 1879.[1]

[*5th September, 1879.*]

An Act for the regulation and control of hackney-carriages in certain Municipalities and Cantonments

WHEREAS it is expedient to provide for the regulation and control of hackney-carriages in certain municipalities and cantonments; It is hereby enacted as follows:— **Preamble.**

1. This Act may be called the Hackney-carriage Act, 1879: **Short title.**

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[1] For Statement of Objects and Reasons, *see* Gazette of India, 1879, Pt. V, p. 52; and for Proceedings in Council, *see ibid.*, Supplement, pp. 49, 78 and 1141.

This Act has been amended in—

Coorg by Coorg Act 6 of 1940; and

Ajmer-Merwara by Act 6 of 1945.

[1]* * * * * * *

Nothing herein contained shall affect any power conferred by any law relating to municipalities, or any rule made in exercise of any such power.

Interpretation clause.

2. In this Act—

"hackney-carriage" means any wheeled vehicle drawn by animals and used for the conveyance of passengers which is kept, or offered, or plies for hire; and

"committee" means a municipal committee, or a body of municipal commissioners, constituted under the provisions of any enactment for the time being in force.

Application of Act to municipalities

3. [2][The State Government concerned may, by notification in the Official Gazette, apply this Act to any municipalities in Uttar Pradesh, ~~Punjab~~, the Central Provinces, Assam, Ajmer or Coorg.]

Power of committees to make rules.

When this Act has been so applied to any municipality, the committee of such municipality may, from time to time, make rules for the regulation and control of hackney-carriages within the limits of such municipality, in the manner in which, under the law for the time being in force, it makes rules or bye-laws for the regulation and control of other matters within such limits.

Confirmation and publication of rules.

[3]Every rule made under this section shall, when confirmed by the [4][Commissioner] and published for such time and in such manner as the [3][Commissioner] may, from time to time, prescribe, have the force of law:

Power of Commissioner to rescind rules.

Provided that the [3][Commissioner] may, at any time, rescind any such rule.

4. [*Power to make rules for cantonments.*] *Rep. by the A. O. 1937.*

Power to extend operation of rule beyond limits of municipality or cantonment.

5. The authority making any rules under this Act may [4][with the sanction of the Commissioner] extend their operation to any railway-station, or specified part of a road, not more than six miles frm the local limits of the municipality [5]* * * concerned:

[6]* * * *

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[1] The words "and it shall come into force at once" rep. by the Second Repealing and Amending Act, 1914 (17 of 1914), s. 3 and Sch. II.

[2] The original paragraph has been successively amended by the A. O. 1937, the A. O. 1948 and the A. O. 1950 to read as above.

[3] Subs. by the Decentralization Act, 1914 (4 of 1914), for "L. G.".

[4] Ins. by the A. O. 1937.

[5] The words "or cantonment" rep. by the A. O. 1937.

[6] The second and third paragraphs rep. by the A. O. 1937.

6. The rules to be made under section 3 [1]* * may, among other matters,— **What rules under section 3 may provide for.**

(*a*) direct that no hackney-carriage, or no hackney-carriage of a particular description, shall be let to hire, or taken to ply, or offered for hire, except under a license granted in that behalf;

(*b*) direct that no person shall act as driver of a hackney-carriage except under a license granted in that behalf;

(*c*) provide for the issue of the licenses referred to in clauses (*a*) and (*b*), prescribe the conditions (if any) on which such licenses shall be granted, and fix the fees (if any) to be paid therefor;

(*d*) regulate the description of animals, harness and other things to be used with licensed carriages, and the condition in which such carriages, and the animals, harness and other things used therewith, shall be kept, and the lights (if any) to be carried after sunset and before sunrise;

(*e*) provide for the inspection of the premises on which any such carriages, animals, harness and other things are kept;

(*f*) fix the time for which such licenses shall continue in force, and the events (if any) upon which within such time they shall be subject to revocation or suspension;

(*g*) provide for the numbering of such carriages;

(*h*) determine the times at which and the circumstances under which, any person keeping a hackney-carriage shall be bound to let or refuse to let such carriage to any person requiring the same;

(*i*) appoint places as stands for hackney-carriages, and prohibit such carriages waiting for hire except at such places;

(*j*) limit the rates or fares, as well for time as distance, which may be demanded for the hire of any hackney-carriage; and prescribe the minimum speed at which such carriages when hired by time shall be driven;

(*k*) limit the number of persons, and the weight of property, which may be conveyed by any such carriage;

(*l*) require the owner or person in charge of any such carriage to keep a printed list of fares, in English and such other language as may be prescribed, affixed inside such carriage in such place as may be determined by the rules, and prohibit the destruction or defacement of such list.

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[1] The words and figure "or section 4" rep. by the A. O. 1937.

(*m*) require drivers to wear a numbered badge or ticket, and to produce their licenses when required by a Magistrate or other person authorized by the rules in this behalf, and prohibit the transfer or lending of such licenses and badges; and

(*n*) provide for the deposit of property found in such carriages, and the payment of a fee by the owner of such property on the delivery thereof to him.

Penalty for breach of rules.

7. Any person breaking any rule made under this Act shall be punished with fine which may extend to fifty rupees.

Disposal of fees and payment of expenses.

8. The amount of any fees received and the amount of any expenses incurred in giving effect to this Act shall [1]* * be credited and debited respectively to the municipal fund [2]* * *.

Power of Magistrate to decide disputes regarding fares.

9. If any dispute arises between the hirer of any hackney-carriage and the owner or driver of such carriage as to the amount of the fare payable by such hirer under any rule made under this Act, such dispute shall, upon application made in that behalf by either of the disputing parties, be heard and determined by any Magistrate or Bench of Magistrates within the local limits of whose jurisdiction such dispute has arisen; and such Magistrate or Bench may, besides determining the amount so in dispute, direct that either party shall pay to the other such sum as compensation for loss of time as such Magistrate or Bench thinks fit.

Any sum determined to be due or directed to be paid under this section shall be recoverable as if it were a fine.[3]

The decision of any Magistrate or Bench in any case under this section shall be final.

When any such case is heard by a Bench, any difference of opinion arising between the members of such Bench shall be settled in the same manner as differences of opinion arising between such members in the trial of criminal cases.

In case of dispute, hirer may require driver to take him to Court.

10. If, at the time any dispute mentioned in section 9 arises, any Magistrate or Bench of Magistrates having jurisdiction in respect of such dispute is sitting within the local limits to which the rules apply, the hirer of the carriage may require the driver thereof to take him in the same to the Court of such Magistrate or Bench for the purpose of making an application under that section.

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[1] The words "in any municipality" rep. by the A. O. 1937.

[2] The words "and in any cantonment where there is a cantonment fund to such fund" rep. by the A. O. 1937.

[3] As to recovery of fines, *see* the General Clauses Act, 1897 (10 of 1897), s. 25.

Any driver neglecting or refusing to comply with such requisition shall be punished with imprisonment for a term which may extend to one month, or with fine not exceeding fifty rupees, or with both.

THE DEKKHAN AGRICULTURISTS' RELIEF ACT, 1879.

CONTENTS.

PREAMBLE.

CHAPTER I.

PRELIMINARY.

SECTIONS.

1. Short title.

Commencement.

Local extent.

2. Construction.

2A. Jagirdars, etc., to be deemed Subordinate Judges.

CHAPTER II.

OF THE HEARING OF CERTAIN SUITS BY SUBORDINATE JUDGES.

3. Application of this Chapter.

4. Certain suits to be instituted in Courts of first class Subordinate Judges.

5. Subordinate Judges not to act as Judges of Small Cause Courts.

6. Jurisdiction of Subordinate Judge and Small Cause Court.

7. Summons to be for final disposal of suit.

Court to examine defendant as witness.

8, 9. [*Repealed.*]

10. No appeal to lie.

CHAPTER III.

Of Suits and other Proceedings to which Agriculturists are Parties.

10A. Power of Court to determine nature of transactions and to admit evidence of an oral agreement or statement.

11. Agriculturists to be sued where they reside.

12. History of transactions with agriculturist-debtors to be investigated.

13. Mode of taking account.

13A. In certain cases rent may be charged in lieu of profits.

14, 15 [*Repealed.*]

15A. Mortgagor entitled to decree for redemption though time fixed by mortgage has not arrived or debt has not been paid.

15AA. Power of Court to name some future date for payment by the mortgagor.

15B. Power to order payment by instalments in case of decree for redemption, foreclosure or sale.

Power to continue the mortgagee in possession.

15C. Power to order payment by instalments in suits for possession of mortgaged property.

15D. Mortgagor may sue for accounts.

16. Agriculturist-debtors may sue for accounts.

Amount of debts in such cases to be determined according to foregoing provisions.

SECTIONS.

17. Decree under section 16 may provide for payment by instalments.

Execution of decrees under this section.

18. Payment into Court in cases under section 16.

19. [*Repealed.*]

20. Power to fix instalments in execution.

21. Arrest and imprisonment in execution of decree for money abolished.

22. Immoveable property exempted from attachment and sale unless specifically pledged.

22A. Power of Collector to set aside sale.

23. Chapter not to apply to Village-munsifs' Courts.

CHAPTER IV.

OF INSOLVENCY.

24. Subordinate Judges to have jurisdiction in agriculturists cases.

25. Agriculturists may apply for adjudication in cases not provided for by Code.

26. Modification of section 351 of the Code.

27. Receiver.

28. Proof of debts.

29. Immoveable property not to vest in Receiver, but may be managed for benefit of creditors.

30. Secured debts.

31. Insolvnt incompetent to sell, etc., property dealt with under section 29 and 30.

32. Scheduled debts discharged.

32. Appeals barred.

CHAPTER V.

Of Village- Munsifs.

Sections.

34. Appointment of Village-munsifs.
35. Suits triable by them.
Jurisdiction of other Courts excluded.
Proviso.
36. District Judge's power of revision.
37. Power of State Government to make rules.

CHAPTER VI.

Of Conciliation.

38. Appointment of Conciliators.
39. Matters which may be brought before Conciliator.
40. Procedure thereupon.
Day for attendance may from time to time be postponed.
41. When all parties appear, Conciliator to endeavour to reconcile them.
42. Conciliator to hear statements of witnesses, etc.
43. Any agreement arrived at to be reduced to writing.
44. Procedure when agreement finally disposes of case and in other circumstances.
45. Procedure where agreement is for reference to arbitration.
46 Certificate to be given to applicant if conciliation fails.
47. Suit, or application for execution, not to be entertained by Civil Court unless such certificate is produced.
48. Allowance to be made in period of limitation.
48-A. [*Repealed.*]
49. State Government to make rules.

CHAPTER VII.

Superintendence and Revision.

50. District Judge to inspect, etc.
51. District Judge may withdraw case from Conciliator or Subordinate Judge,
or sit with Subordinate Judge as a Bench for trial of any case.

SECTIONS.

52. Appointment of Assistant or Subordinate Judges to aid District Judge.

53. Of revision.

54. Special Judge.

CHAPTER VIII.

REGISTRATION BY VILLAGE-REGISTRARS.

55. Appointment of Village-registrars.

56. Instruments executed by agriculturist not to be deemed valid unless executed before a Village-registrar.

57. Such instruments to be written by, or under the superintendence of, a Village-registrar and executed in his presence.

Attestation of such instruments.

58. Registration of instruments by Village-registrars.

59. Consideration to be fully stated in every instrument executed before a Village-registrar.

Previous instruments to be produced.

Production of copy of previous instrument when to be permitted.

60. Registration under this Act to be deemed equivalent to registration under Indian Registration Act, 1877.

61. Superintendence of Village-registrars and custody and destruction of their records.

62. Exemption of instruments to which the Government or any officer of the Government is a party.

63. Power of State Government to make rules.

CHAPTER VIIIA.

REGISTRATION OF INSTRUMENTS REFERRED TO IN SECTION 17 OF THE INDIAN REGISTRATION ACT, 1877.

63A. Mode of execution by agriculturists of instruments required to be registered under Act III of 1877.

CHAPTER IX.

OF RECEIPTS AND STATEMENTS OF ACCOUNT.

SECTIONS.

64. Agriculturists entitled to written receipts.

65. Agriculturists entitled to annual statements of account.

66. Agriculturists entitled to have account made up from time to time in a pass-book.

67. Penalty for contravention of sections 64 to 66.

CHAPTER X.

LEGAL PRACTITIONERS.

68. Pleaders, etc , excluded in certain cases.

69. Power of Court to appoint pleader for agriculturist.

CHAPTER XI.

MISCELLANEOUS.

70. Mortgages, etc., to be valid only when written.

71. Bar of application of section 258, Act XIV, 1882.

71A. Rate of interest allowable on taking an account.

72. Limitation.

73. [*Repealed.*]

73A. Certain agricultural produce exempted from attachment, etc.

74. Civil Procedure Code to apply in Subordinate Judges' Courts.

74A. Co-operative credit societies.

75. Additional power to make rules.

76. Rules to be published.

ACT No. XVII of 1879.[1]

[*29th October 1879.*]

An Act for the relief of Indebted Agriculturists in certain parts of the Dekkhan.

WHEREAS it is expedient to relieve the agricultural classes in certain parts of the Dekkhan from indebtedness; It is hereby enacted as follows:— Preamble.

CHAPTER I.

PRELIMINARY.

1. This Act may be cited as the [2]Dekkhan Agriculturists' Relief Act, 1879: and it shall come into force on the first day of November, 1879. Short title. Commencement.

[3][This section and] sections 11, 56, 60 and 62 extend to [4][the whole of India except Part B States]. The rest of this Act extends only to the districts of Poona, Satara, Sholapur and Ahmednagar, [5][but may, from time to time, be extended wholly or in part by the [6][State Government] [7]* * to any other district or districts in the [8][State] of Bombay,] [9][or to any part or parts of any other such district or districts]. Local extent.

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[1] For Statement of Objects and Reasons, *see* Gazette of India, 1879, Pt. V, p. 796: for Report of the Select Committee, *see ibid.*, p. 939; for Proceedings in Council relating to the Bill it was originally proposed to introduce, *see ibid.*, 1878, Supplement p. 1028; and for Proceedings relating to the Bill which included the provisions of both this Bill and the Bill which the Local Council had introduced, *see ibid.*, 1879, Supplement, pp. 595, 833, 873 and 1327.

This Act shall cease to have force in areas in Bombay Province on the establishment of a Board under s. 4 of the Bombay Agricultural Debtors Relief Act, 1939 (Bom. 28 of 1939) : *see* s. 85 of that Act, as amended.

[2] Acts 17 of 1879, 23 of 1881 and 22 of 1882 may be cited collectively as the Dekkhan Agriculturists' Relief Acts, 1879 to 1882—*see* s. 1 (*1*) of the Dekkhan Agriculturists' Relief Act, 1882 (22 of 1882). The Acts of 1879 to 1882 and Act 23 of 1886 may be cited collectively as the Dekkhan Agriculturists' Relief Acts, 1879 to 1886—*see* s. 1 (*1*) of the Dekkhan Agriculturists' Relief Act, 1886 (23 of 1886). The Acts of 1879 to 1886 and Act 6 of 1895 may be cited collectively as the Dekkhan Agriculturists' Relief Acts, 1879 to 1895—*see* s. 1 (*1*) of the Dekkhan Agriculturists' Relief Act, 1895 (6 of 1895). The Acts of 1879 to 1895 and Bom. Act I of 1902 may be cited collectively as the Dekkhan Agriculturists' Relief Acts, 1876 to 1902—*see* s. 1 (*1*) of the Dekkhan Agriculturists' Relief Act, 1902 (Bom. 1 of 1902).

[3] These words were ins. by s. 3 of the Dekkhan Agriculturists' Relief Act, 1881 (23 of 1881) and are to be deemed to have always been inserted.

[4] Subs. by the A. O. 1950 for "all the Provinces of India" which had been subs. by the A. O. 1948 for "the whole of British India".

[5] Ins. by the Dekkhan Agriculturists' Relief Act, 1886 (23 of 1886), s. 3.

[6] Subs. by the A. O. 1950 for "Provincial Govt." which had been subs. by the A. O. 1937 for 'L. G.".

[7] The words "with the previous sanction of the G. G. in C." rep. by the Devolution Act, 1920 (38 of 1920), s. 2 and Sch. I.

[8] Subs. by the A. O. 1950 for "Presidency".

[9] Ins. by the Dekkhan Agriculturists' Relief Act, 1895 (6 of 1895), s. 4.

Construction.

[1][2. In construing this Act, unless there is something repugnant in the subject or context, the following rules shall be observed, namely:—

1st.—"Agriculturist" shall be taken to mean a person who by himself or by his servants or by his tenants earns his livelihood wholly or principally by agriculture carried on within the limits of a district or part of a district to which this Act may for the time being extend, or who ordinarily engages personally in agricultural labour within those limits.

Explanations.—(*a*) An agriculturist who, without any intention of changing his status as such, temporarily ceases to earn his livelihood by agriculture or to engage personally in agricultural labour as aforesaid, or who is prevented from so earning his livelihood or engaging in agriculture by age or bodily infirmity or by necessary absence in the military service of [2][the Union], does not hereby cease to be an agriculturist within this definition.

(*b*) An assignee of Government assessment or a mortgagee is not as such an agriculturist within this definition.

2nd.—In Chapters II, III, IV and VI, and in section 69, the term "agriculturist," when used with reference to any suit or proceeding, shall include a person who, when any part of the liability which forms the subject of that suit or proceeding was incurred, was an agriculturist within the meaning of that word as then defined by law.

3rd.—An agriculturist shall be deemed to reside where he earns his livelihood by agriculture or personally engages in agricultural labour as aforesaid.

4th.—"Money" shall be deemed to include agricultural produce, implements and stock.

5th.—"Lease" shall be deemed to include a counterpart, kabuliyat, an undertaking to cultivate or occupy, and an agreement to lease.

6th.—"Standing crops" shall include crops of all sorts attached to the soil, and leaves, flowers, and fruits upon, and juice in, trees and shrubs.]

[3][*7th.*—For the purposes of Chapters VIII and VIII-A an instrument or a copy of an instrument drawn up on a printed form by or under the superintendence of a village-registrar or of a sub-registrar shall be deemed to be an instrument or copy written or made by or under the superintendence of such registrar or sub-registrar. In this clause the term 'printed

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[1] Subs. by the Dekkhan Agriculturists' Relief Act, 1895 (6 of 1895), s. 5, for the original section.

[2] Subs. by the A. O. 1950 for "Her Majesty".

[3] Cl. 7th ins. by the Bombay Repealing and Amending Act, 1910 (Bom. 1 of 1910).

form' shall be deemed to include a form prepared by any mechanical copying press.]

[1][**2A.** Every Jagirdar and other authority invested with powers under Bombay Regulation XIII of 1830 and Act XV of 1840 shall, for the purposes of this Act, be deemed to be a Subordinate Judge of such class as the [2][State Government] may from time to time direct.]

Jagirdars, etc., to be deemed Subordinate Judges.

CHAPTER II.

OF THE HEARING OF CERTAIN SUITS BY SUBORDINATE JUDGES.

3. The provisions of this Chapter shall apply to—

Application of this Chapter.

(*a*) suits for an account, [3][whatever be the amount or value of the subject-matter thereof,] instituted [4]* * * * * * * by an agriculturist in the Court of a Subordinate Judge under the provisions hereinafter contained, and

(*b*) suits of the descriptions next hereinafter mentioned [5]* * * * *

(1) when such suits are heard by Subordinate Judges of the first class and the subject-matter thereof does not exceed in amount or value five hundred rupees, or

(2) when such suits are heard by Subordinate Judges of the second class and the subject-matter thereof does not exceed in amount or value one hundred rupees, or

(3) when such suits are heard by Subordinate Judges of the second class and the subject-matter thereof exceeds one hundred rupees, but does not exceed five hundred rupees, in amount or value, and the parties to the suits agree that such provisions shall apply thereto.

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[1] S. 2A ins. by the Dekkhan Agriculturists' Relief Act, 1882 (22 of 1882), s. 4.

[2] *See* footnote 6 on p. 527, *supra*.

[3] Ins. by Act 22 of 1882, s. 5.

[4] The words "on or after the first day of November, 1879," rep. by the Amending Act, 1895 (16 of 1895), s. 2 and Sch. I.

[5] The words "and instituted on or after the same date" rep. by s. 2 and Sch. I, *ibid.*

(*Chapter II.—Of the Hearing of certain Suits by Subordinate Judges.*)

The descriptions of suits referred to in clause (*b*) are the following, namely:—

(*w*) suits for the recovery of money alleged to be due to the plaintiff—

on account of money lent or advanced to, or paid for, the defendant, or

as the price of goods sold, or

on an account stated between the plaintiff and defendant, or

on a written or unwritten engagement for the payment of money not hereinbefore provided for;

(*x*) suits for recovery of money due on contracts other than the above and suits for rent or for movable property, or for the value of such property, or for damages; and

(*y*) suits for foreclosure or for the possession of mortgaged property, or for sale of such property, or for foreclosure [1][and] sale, when the defendant, or any one of the defendants, [2]* * * * * is an agriculturist; and

(*z*) suits for the redemption of mortgaged property when the plaintiff, or, where there are several plaintiffs, any one of the plaintiffs, is an agriculturist.

Certain suits to be instituted in Courts of first class Subordinate Judges.

4. Where a Subordinate Judge of the first class and a Subordinate Judge of the second class have ordinary jurisdiction in the same local area, every suit referred to in section 3, clause (*b*), and instituted in such local area, shall, if the amount or value of the subject-matter of such suits exceeds one hundred rupees and does not exceed five hundred rupees, be instituted in the Court of the Subordinate Judge of the first class.

Subordinate Judges not to act as Judges of Small Cause Courts.

5. Notwithstanding anything contained in the Bombay Civil Courts Act, 1869, section 28, no Subordinate Judge shall be invested with the jurisdiction of a Judge of a Court of Small Causes [3]* * * * XIV of 1869.

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[1] Subs. by the Dekkhan Agriculturists' Relief Act, 1886 (23 of 1886), s. 5, for "or"

[2] The words "not being merely a surety for the principal debtor" rep. by the Dekkhan Agriculturists' Relief Act, 1881 (23 of 1881), s. 5.

[3] The words "and any such jurisdiction heretofore conferred on any Subordinate Judge shall be deemed, except as regards suits instituted before the said first day of November, 1879, to have been withdrawn" rep. by the Amending Act, 1895 (16 of 1895), s. 2 and Sch. I.

(Chapter II.—Of the Hearing of certain Suits by Subordinate Judges.
Chapter III.—Of Suits and other Proceedings to which Agriculturists are parties.)

6. The [1][State Government] may, from time to time, by notification in the [2][Official Gazette], direct that any class of suits which a Subordinate Judge would be precluded from hearing by section 12 of [3]Act XI of 1865 *(to consolidate and amend the law relating to Courts of Small Causes beyond the local limits of the ordinary original civil jurisdiction of the High Courts of Judicature)*, shall be heard and determined by him and not otherwise, and may, by a like notification, cancel any such direction.

Jurisdiction of Subordinate Judge and Small Cause Court.

7. In every case in which it seems to the Court possible to dispose of a suit at the first hearing, the summons shall be for the final disposal of the suit.

Summons to be for final disposal of suit.

In every suit the Court shall examine the defendant as a witness unless, for reasons to be recorded by it in writing, it deems it [4][clearly] unnecessary so to do.

Court to examine defendant as witness.

[4][*Explanation.*—The compulsory examination of the defendant shall not be dispensed with merely by reason of the fact that the defendant has filed a written statement.]

8. [*Written statements.*] *Rep. by the Deccan Agriculturists' Relief Act, 1895 (VI of 1895), s. 3.*

9. [*Record of evidence.*] *Rep. by the Deccan Agriculturists' Relief Act, 1895 (VI of 1895), s. 3.*

10. No appeal shall lie from any decree or order passed in any suit to which this Chapter applies.

No appeal to lie.

CHAPTER III.

OF SUITS AND OTHER PROCEEDINGS TO WHICH AGRICULTURISTS ARE PARTIES.

[5][**10A.** Whenever it is alleged at any stage of any suit or proceeding to which an agriculturist is a party that any transaction in issue entered into by such agriculturist or the person, if any, through whom he claims was a transaction of such a nature that the rights and liabilities of the parties

Power of Court to determine nature of

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[1] *See* footnote 6 on p. 527, *supra*.

[2] Subs. by the A. O. 1937 for "local Gazette".

[3] *See* now the Provincial Small Cause Courts Act, 1887 (9 of 1887), s. 16.

[4] Ins. by the Dekkhan Agriculturists' Relief Act, 1895 (6 of 1895), s. 6.

[5] Ins. by the Dekkhan Agriculturists' Relief (Amendment) Act, 1907 (Bom. 2 of 1907), s. 2.

(Chapter III.—Of Suits and other Proceedings to which Agriculturists are parties.)

transactions and to admit evidence of an oral agreement or statement.

thereunder are triable wholly or in part under this Chapter, the Court shall, notwithstanding anything contained in section 92 of the Indian Evidence Act, 1872, [1][or in section 49 of the Indian Registration Act, 1908] or in any other law for the time being in force, have power to inquire into and determine the real nature of such transaction and decide such suit or proceeding in accordance with such determination and shall be at liberty, notwithstanding anything contained in any law as aforesaid, to admit evidence of any oral agreement or statement [1][or unregistered documents] with a view to such determination and decision:

I of 1872.

XVI of 1908.

Provided that such agriculturist or the person, if any, through whom he claims was an agriculturist at the time of such transaction:

Provided further that nothing in this section shall be deemed to apply to any suit to which a *bona fide* transferee for value without notice of the real nature of such transaction or his representative is a party where such transferee or representative holds under a registered deed executed more than twelve years before the institution of such suit.

Illustrations.

(*a*) A landlord sues for possession of land leased by him to an agriculturist. The defendant alleges that he mortgaged the land with possession to the lessor who is entitled to its possession only as such mortgagee and not as owner, and asks that he may be allowed to redeem the mortgage without being ejected. The Court may admit evidence on this allegation, and, if satisfied that it is correct, may decline to eject the defendant as tenant, and allow the suit to be converted into one for redemption of the mortgaged property.

(*b*) An Agriculturist sues to redeem property alleged to have been mortgaged by a deed in the form of a lease. The Court may admit evidence of the intention of the parties outside the deed in order to determine whether the transaction was a mortgage or a lease, and if satisfied that the transaction was a mortgage may enforce the deed as a mortgage deed.

(*c*) A money-lender sues to enforce a sale-deed entered into by an agriculturist. It is alleged that there was a contemporaneous oral agreement that the transaction should be deemed to be a mortgage. The Court may admit evidence of such oral agreement, and if satisfied of the existence of the agreement may decline to enforce the deed as a sale-deed.

(*d*) An agriculturist sues to redeem property alleged to have been mortgaged by a deed in the form of a sale. The Court may admit evidence of the intention of the parties outside the deed in order to determine whether the transaction was a mortgage or a sale, and if satisfied that the transaction was a mortgage may enforce the deed as a mortgage-deed.]

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[1] Ins. by the Dekkhan Agriculturists Relief (Amendment) Act, 1935 (Bom. 5 of 1935), s. 2.

(Chapter III.—Of Suits and other Proceedings to which Agriculturists are parties.)

11. Every suit of the description mentioned in section 3, clause (*w*), may, if the defendant, or, when there are several defendants, one only of such defendants, is an agriculturist, be instituted and tried in a Court within the local limits of whose jurisdiction such defendant resides, and not elsewhere.

Agriculturists to be sued where they reside.

Every such suit in which there are several defendants who are agriculturists may be instituted and tried in a Court within the local limits of whose jurisdiction any one of such defendants resides, and not elsewhere.

Nothing herein contained shall affect sections 22 to 25 (both inclusive) of the [1]Code of Civil Procedure.

12. In any suit of the description mentioned in section 3, clause (*w*), in which the defendant or any one of the defendants [2]* * * * is an agriculturist,

History of transactions with agriculturist-debtor to be investigated.

and in any suit of the descriptions mentioned in section 3, clause (*y*) or clause (*z*),

[3][the Court, if the amount of the creditor's claim is disputed, shall examine both the plaintiff and the defendant as witnesses, unless, for reasons to be recorded by it in writing, it deems it unnecessary so to do, and shall inquire] into the history and merits of the case, from the commencement of the transactions between the parties and the persons (if any) through whom they claim, out of which the suit has arisen, first, with a view to ascertaining whether there is any defence to the suit on the ground of fraud, mistake, accident, undue influence or otherwise, and, secondly, with a view to taking an account between such parties in manner hereinafter provided.

When the amount of the claim is admitted and the Court for reasons to be recorded by it in writing believes that such admission is true and is made by the debtor with a full knowledge of his legal rights as against the creditor, the Court shall not be bound so to inquire, but may do so if it thinks fit.

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[1] *See* now the Code of Civil Procedure, 1908 (5 of 1908).

[2] The words "not being merely a surety of the principal debtor" rep. by the Dekkhan Agriculturists' Relief Act, 1881 (23 of 1881), s. 5.

[3] Subs. by the Dekkhan Agriculturists' Relief Act, 1886 (23 of 1886), s. 6, for "the Court shall, if the amount of the creditor's claim is disputed, inquire".

(*Chapter III.—Of Suits and other Proceedings to which Agriculturists are parties.*)

In other cases in which the amount of the claim is admitted, the Court shall be bound to inquire as aforesaid.

Section 9, clause first, of Bombay Regulation V of 1827 is repealed so far as regards any suit to which this section applies.

Nothing herein contained shall affect the right of the parties to require that any matter in difference between them be referred to arbitration.

Mode of taking account.

13. When the Court inquires into the history and merits of a case under section 12, it shall—

notwithstanding any agreement between the parties or the persons (if any) through whom they claim, as to allowing compound interest or setting-off the profits of mortgaged property without an account in lieu of interest, or otherwise determining the manner of taking the account,

and notwithstanding any statement or settlement of account, or any contract purporting to close previous dealings and create a new obligation,

open the account between the parties from the commencement of the transactions and take that account according to the following rules (that is to say) :—

(*a*) separate accounts of principal and interest shall be taken:

(*b*) in the account of principal there shall be debited to the debtor such money as may from time to time have been actually received by him or on his account from the creditor, and the price of goods, if any, sold to him by the creditor, as part of the transactions:

[1][(*c*) in the account of principal there shall not be debited to the debtor any sum in excess of a sum due or to accrue due under a decree which the debtor may have agreed directly or indirectly to pay in pursuance of any agreement relating to the satisfaction of the said decree:]

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[1] Subs. by the Dekkhan Agriculturists' Relief (Amendment) Act, 1932 (Bom. 14 of 1932), s. 2, for the original cl. (*c*).

(*d*) in the account of principal there shall not be debited to the debtor any accumulated interest which has been converted into principal at any statement or settlement of account or by any contract made in the course of the transactions, unless the Court, for reasons to be recorded by it in writing, deems such debit to be reasonable:

(*e*) in the account of interest there shall be debited to the debtor, monthly, simple interest on the balance of principal for the time being outstanding, at the rate allowed by the Court as hereinafter provided:

(*f*) all money paid by or on account of the debtor to the creditor or on his account, and all profits, service or other advantages of every description, received by the creditor in the course of the transactions (estimated, if necessary, at such money-value as the Court in its discretion, or with the aid of arbitrators appointed by it, may determine), shall be credited first in the account of interest; and when any payment is more than sufficient to discharge the balance of interest due at the time it is made, the residue of such payment shall be credited to the debtor in the account of principal:

(*g*) the accounts of principal and interest shall be made up to the date of instituting the suit, and the aggregate of the balances (if any) appearing due on both such accounts against the debtor on that date shall be deemed to be the amount due at that date, except when the balance appearing due on the interest-account exceed that appearing due on the principal-account, in which case double the latter balance shall be deemed to be the amount then due.

In certain cases rent may be charged in lieu of profits.

[1][**13A.** Where the mortgaged property is in the possession of the mortgagee or his tenants other than the mortgagor, and the Court is unable to determine what profits have been actually received, it may fix a fair rent for such property and charge to the mortgagee such rent as profits for the purpose of section 13:

Provided that, if it be proved that in any year there was an entire or serious failure of the crops, an abatement of the whole or part of such rent may be allowed for the year.]

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[1] S. 13A ins. by the Dekkhan Agriculturists' Relief Act, 1895 (6 of 1895), s. 7.

(Chapter III.—Of Suits and other Proceedings to which Agriculturists are parties.)

14. [*Interest to be allowed.*] *Rep. by the Dekkhan Agriculturists' Relief Act, 1895 (VI of 1895), s. 3.*

15. [*Reference to arbitration in certain cases.*] *Rep. by the Dekkhan Agriculturists' Relief Act, 1895 (VI of 1895), s. 3.*

Mortgagor entitled to decree for redemption though time fixed by mortgage has not arrived or debt has not been paid.

[1][**15A.** In a suit of the description mentioned in section 3, clause (*z*), the Court shall not refuse to pass a decree for redemption merely on the ground that the time fixed for the payment of the principal of the mortgage-money has not arrived, or on the ground that the mortgage-debt has not been completely discharged, or on both.]

Power of Court to name some future date for payment by the mortgagor.

[2][**15AA.** So far as it may be consistent with the provisions of this Act every decree for redemption or foreclosure of any mortgage, and every decree or order for the sale of any mortgaged property made at the instance of a mortgagee thereof, shall name such future day, not being less than six months after the date of such decree, as the Court may think reasonable for the payment by the mortgagor of the money payable under the decree, and no such foreclosure shall be made absolute nor shall any such sale take place before the day so named.]

Power to order payment by instalments in case of decree for redemption, foreclosure or sale.

[1][**15B.** (*1*) The Court may in its discretion, in passing a decree for redemption, foreclosure or sale in any suit of the descriptions mentioned in section 3, clause (*y*) or clause (*z*), or in the course of any proceedings under a decree for redemption, foreclosure or sale passed in any such suit, whether before or after this Act comes into force, direct that any amount payable by the mortgagor under that decree shall be payable in such instalments, on such dates and on such terms as to the payment of interest, and, where the mortgagee is in possession, as to the appropriation of the profits and accounting therefor, as it thinks fit.

(*2*) If a sum payable under any such direction is not paid when due, the Court shall, except for reasons to be recorded by it in writing, instead of making an order for the sale of the entire property mortgaged or for foreclosure, order the sale of such portion only of the property as it may think necessary for the realisation of that sum.]

Power to continue the mortgagee in possession.

[3][(*3*) In passing a decree for redemption or foreclosure in any such suit as aforesaid, the Court may direct that the amount payable by the mortgagor shall be discharged by continuing the mortgagee in possession for such further

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[1] Ss. 15A and 15B ins. by the Dekkhan Agriculturists' Relief Act, 1882 (22 of 1882), s. 6.

[2] S. 15AA ins. by the Dekkhan Agriculturists' Relief Act, 1895 (6 of 1895), s. 8.

[3] Sub-sections (3) and (4) of s. 15B ins. by s. 9, *ibid.*

period as will enable him to recover his principal with reasonable interest, and that on the expiry of such period the property mortgaged shall be restored to the mortgagor.

(*4*) When the amount payable to a mortgagee in possession has been determined in any such suit as aforesaid, the Court may in its discretion, instead of making an order for payment thereof, direct that the mortgagee be continued in possession for such period (to be specified by the Court) as will, in the opinion of the Court, be sufficient to enable him to recover from the profits the amount payable by the mortgagor together with reasonable interest, and that on the expiry of such period the property mortgaged shall be restored to the mortgagor.]

Power to order payment by instalments in suits for possession of mortgaged property.

[1][**15C.** (*1*) The Court may, if it thinks fit, in any suit for the possession of mortgaged property under section 3, clause (*y*), instead of passing a decree for possession of that property, pass a decree directing that the amount payable by the mortgagor shall be payable in such instalments, on such dates and on such terms as to the payment of interest, and as to the appropriation of the profits and accounting therefor, as it thinks fit.

(*2*) If a sum payable under any such direction is not paid when due, the Court may, if it thinks fit, instead of making any other order which it is empowered to make for the realisation of that sum, make an order directing that the mortgagee be put in possession of the whole or any portion of the property mortgaged.]

Mortgagor may sue for account.

[1][**15D.** (*1*) Any agriculturist whose property is mortgaged may sue for an account of the amount of principal and interest remaining unpaid on the mortgage and for a decree declaring that amount.

(*2*) When any such suit is brought, the amount (if any) remaining unpaid shall be determined under the same rules as would be applicable under this Act if the mortgagee had sued for the recovery of the debt.

(*3*) At any time before the decree in the suit is signed, the plaintiff may apply to the Court to pass a decree for the redemption of the mortgage, or the mortgagee, if he would then have been entitled to sue for foreclosure or sale, may apply to the Court to pass a decree for foreclosure or sale (as the case may be), instead of a decree merely declaring the amount remaining unpaid, and the Court may, if it thinks fit, grant the application.

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[1] Ss. 15C and 15D ins. by the Dekkhan Agriculturists' Relief Act, 1882 (22 of 1882), s. 6.

(Chapter III.—Of Suits and other Proceedings to which Agriculturists are parties.)

(*4*) The provisions of section 15B shall apply to any decree passed under sub-section (*3*).]

Agriculturist-debtors may sue for accounts.

16. Any agriculturist may sue for an account of money lent or advanced to or paid for him by a creditor, or due by him to the creditor as the price of goods sold, or on a written or unwritten engagement for the payment of money, and of money paid by him to the creditor, and for a decree declaring the amount, if any, still payable by him to the creditor.

Amount of debts in such cases to be determined according to foregoing provisions.

When any such suit is brought, the amount (if any) payable by the plaintiff shall be determined under the same rules as would be applicable under this Act if the creditor had sued him for recovery of the debt.

Decree under section 16 may provide for payment by instalments. Execution of decrees under this section.

17. A decree passed under section 16 may, besides declaring the amount due, direct that such amount shall be paid by instalments, with or without interest; and, when any such decree so directs, the plaintiff may pay the amount of such decree, or the amount of each instalment fixed by such decree, as it falls due, into Court, in default whereof execution of the decree may be enforced by the defendant in the same manner as if he had obtained a decree, in a suit to recover the debt.

Payment into Court in cases under section 16.

18. The plaintiff in any suit instituted under section 16 may at any stage of such suit deposit in Court such sum of money as he considers a satisfaction in full of the defendant's claim against him.

Notice of the deposit shall be given by the Court to the defendant, and the amount of the deposit shall (unless the Court otherwise directs) be paid to the defendant on his application.

No interest shall be allowed to the defendant on any sum so deposited from the date of the receipt of such notice, whether the sum deposited be in full of the claim or fall short thereof.

19. [*Power to discharge judgment-debtor. Power to direct institution of insolvency proceedings.*] *Rep. by the Dekkhan Agriculturists' Relief Act, 1895, (VI of 1895), s. 3.*

Power to fix instalments in execution.

20. The Court may at any time direct that the amount of any decree passed, whether before or after this Act comes into force, against an agriculturist, or the portion of the same which it directs under section 19 to be paid, shall be paid by instalments with or without interest.

Arrest and imprisonment in execution of decree for money abolished.

21. No agriculturist shall be arrested or imprisoned in execution of a decree for money [1][passed whether before or after this Act comes into force].

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[1] Ins. by the Dekkhan Agriculturists' Relief Act, 1882 (22 of 1882), s. 8.

(Chapter III.—Of Suits and other Proceedings to which Agriculturists are parties.)

22. [1][Immovable property belonging to an agriculturist [2]* * * * shall not be attached or sold] in execution of any decree or order [3][passed whether before or after this Act comes into force], unless it has been specifically mortgaged for the repayment of the debt to which such decree or order relates, and the security still subsists. [4][For the purposes of any such attachment or sale as aforesaid, standing crops shall be deemed to be movable property.] **Immovable property exempted from attachment and sale unless specifically pledged.**

But the Court, [5][on application or of its own motion], may, when passing a decree against an agriculturist or [6][in the course of any proceedings under a decree against an agriculturist passed whether before or after this Act comes into force], direct the Collector to take possession, for any period not exceeding seven years, of any such property of the judgment-debtor to the possession of which he is entitled, and which, in the opinion of the Collector, is not required for his support and the support of the members of his family dependent on him, and the Collector shall thereupon take possession of such property and deal with the same for the benefit of the decree-holder in manner provided by section 29.

The provisions of section 31 shall, *mutatis mutandis,* apply to any property so dealt with.

[7][**22A.** (*1*) When any immoveable property belonging to an agriculturist has been sold by public auction under the provisions of section 325 of the [8]Code of Civil Procedure, the sale may within thirty days from the date of the auction be set aside by the Collector, if he considers the price bid by the purchaser to be inadequate. **Power of Collector to set aside sale.** XIV of 1882.

(*2*) When the sale is so set aside the purchaser shall be entitled to receive back his deposit or his purchase-money, as the case may be, and the Collector may re-sell the property by public auction or private contract, as he thinks fit. Every such re-sale shall be deemed to be a sale under the provisions of section 325 of the [8]Code of Civil Procedure.] XIV of 1882.

23. No provision of this Chapter shall apply to the proceedings in the Courts of Village-munsifs unless such provision has been specially extended thereto under the power hereinafter conferred. **Chapter not to apply to Village-Munsifs' Courts.**

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[1] Subs. by the Dekkhan Agriculturists' Relief Act, 1886 (23 of 1886), s. 7, for "No Agriculturist's immovable property shall be attached or sold".

[2] The words "other than his standing crops" rep. by the Dekkhan Agriculturists' Relief Act, 1895 (6 of 1895), s. 10.

[3] Ins. by the Dekkhan Agriculturists' Relief Act, 1882 (22 of 1882), s. 9 (*1*).

[4] Ins. by the Dekkhan Agriculturists' Relief Act, 1895 (6 of 1895), s. 10.

[5] Ins. by the Dekkhan Agriculturists' Relief Act, 1882 (22 of 1882), s. 9 (*2*).

[6] Subs. by s. 9 (*3*), *ibid.* for "or at any subsequent time".

[7] S. 22A ins. by the Dekkhan Agriculturists' Relief (Amendment) Act, 1907 (Bom. 2 of 1907), s. 3.

[8] *See* now the Code of Civil Procedure, 1908 (5 of 1908), Sch. III.

(*Chapter IV.—Of Insolvency.*)

[1]CHAPTER IV.

OF INSOLVENCY.

Subordinate Judges to have jurisdiction in agriculturists' cases.

24. Every Subordinate Judge shall have the powers conferred by sections 344 to 359 (both inclusive) of the [2]Code of Civil Procedure, as modified by the provisions next hereinafter contained, for the purpose of dealing with applications under the [2]Code of Civil Procedure or under this Act to have agriculturists residing within the local limits of his ordinary jurisdiction declared insolvent and proceedings taken under orders passed under the second clause of section 19; and, except as provided in Chapter VII of this Act, no such application or proceeding shall be dealt with by any other Court. X of 1877. X of 1877.

Agriculturists may apply for adjudication in cases not provided for by Code.

25. Any agriculturist whose debts (if any) amount to fifty rupees or upwards may apply to any Subordinate Judge within the local limits of whose ordinary jurisdiction he resides to be declared an insolvent, though he has not been arrested or imprisoned, and though no order of attachment has issued against his property, in execution of a decree.

Modification of section 351 of the Code.

26. Notwithstanding anything contained in section 351 of the [2]Code of Civil Procedure, the Court shall declare an agriculturist an insolvent if it is satisfied that he is in insolvent circumstances, and that the application to have him declared an insolvent has been properly made under section 344 of the said [2]Code or section 25 of this Act. X of 1877.

Receiver.

27. No person other than the Nazir of the Court shall be appointed as receiver, and no receiver shall be entitled to commission.

Proof of debts.

28. In determining under section 352 of the said [2]Code the amount of any claim of the nature referred to in section 12 of this Act due by an insolvent agriculturist, the Court shall proceed in the manner prescribed by sections 12 to 15 of this Act, both inclusive.

Immovable property not to vest in receiver, but may be managed for benefit of creditors.

29. No immovable property of the insolvent shall vest in the receiver; but the Court, [3][on application or of its own motion,] may direct the Collector to take into his possession, for any period not exceeding seven years from the date on which the receiver has been appointed, any immovable property to the possession of which the insolvent is entitled, and which, in the opinion of the Collector, is not required for the support of the insolvent and the members of his family dependent on him, and, subject to any rules the [4][State

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[1] The Provincial Insolvency Act, 1920 (5 of 1920), does not apply to cases to which this Chapter is applicable; *see* s. 82 of that Act.

[2] Rep. by the Code of Civil Procedure (14 of 1882). For corresponding provisions, *see* the Provincial Insolvency Act, 1920 (5 of 1920).

[3] Ins. by the Dekkhan Agriculturists' Relief Act, 1882 (22 of 1882), s. 10.

[4] *See* footnote 6 on p. 527, *supra*.

Government] may from time to time make in this behalf, to manage the same for the benefit of the creditors by letting it on lease or otherwise:

Provided that, if the insolvent or his representative in interest at any time pays into Court the balance of the scheduled debts then unpaid, he shall, subject to any rights created in favour of other persons by the Collector, be entitled to recover possession of such property.

A Collector managing property under this section shall during the management have all the powers which the owner might as such have legally exercised, and shall receive and recover all rents and profits of such property, and for the purpose of recovering such rents and profits shall have, in addition to any powers possessed by an owner, all powers possessed by a Collector for securing and recovering the land-revenue due to Government except the powers mentioned in the Bombay Land-revenue Code, 1879, section 150, clauses (*b*), (*d*) and (*e*).

Bom. V of 1879.

Nothing in this section shall authorise the Court to direct the Collector to take into his possession any houses or other buildings belonging to and occupied by an agriculturist.

Secured debts.

30. When any scheduled debt is secured by a mortgage of any portion of the insolvent's immovable property, the Court, [1][on application or of its own motion], may direct the Collector, if he can obtain a premium equal to the amount of such debt by letting such property for a term not exceeding twenty years, to let such property, and, if he cannot so obtain such premium, to sell such property under section 325 of the [2]Code of Civil Procedure.

X of 1877.

Where property is let under this section the premium shall be applied to the payment of the debt, and the rent, if any, shall for a period of seven years from the date of such letting be paid to the receiver and thereafter to the insolvent or his representative in interest.

When property is sold under this section, the sale-proceeds shall be applied, first, to the payment of the debt, and the balance, if any, shall be paid to the receiver.

Insolvent incompetent to sell, etc., property dealt with under sections 29 and 30.

31. So long as any management under section 29 or letting under section 30 continues, the insolvent and his representative in interest shall be incompetent to mortgage, charge, lease or alienate the property managed or let, or any part thereof.

Scheduled debts discharged.

32. When the balance available for distribution among the scheduled creditors under [3]section 356 of the said Code has been distributed, the claims of such creditors shall be deemed to have been discharged, except

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[1] Ins. by the Dekkhan Agriculturists' Relief Act, 1882 (22 of 1882), s. 10.

[2] *See* now the Code of Civil Procedure, 1908 (5 of 1908), Sch. III, para. 9.

[3] *See* now the Provincial Insolvency Act, 1920 (5 of 1920), s. 61 (5).

as regards the right to share in the profits of any property managed by the Collector under section 29, or let by him under section 30.

Appeals barred.

33. No appeal shall lie from any order passed under this Chapter except orders passed in exercise of the power conferred by section 359 of the [1]Code of Civil Procedure. X of 1877.

CHAPTER V.

OF VILLAGE-MUNSIFS.

Appointment of village-munsifs.

34. The [2][State Government] may, from time to time, appoint any patel of a village or any other person possessing local influence in a village to be a Village-munsif for such village or for such village and for any other villages the sites of which are situate in the same district not more than two miles from the site of such village, and may cancel any such appointment.

Suits triable by them.

35. Every Village-munsif so appointed shall take cognizance of suits of the description mentioned in section 3, [3][clauses (*w*) and (*x*)], when the subject-matter thereof does not exceed [4][twenty-five] rupees in amount or value, and all the defendants at the time of the commencement of the suit actually and voluntarily reside or carry on business or personally work for gain within the local area for which such Village-munsif is appointed.

Jurisdiction of other Courts excluded.

Notwithstanding anything hereinbefore contained, a suit cognizable by a Village-munsif shall not be heard by any other Court:

Proviso.

Provided that the District Judge may, from time to time, transfer any suit instituted before a Village-munsif to his own Court or any other Civil Court in the district for trial:

Provided also that no Village-munsif shall try any suit to or in which he is a party or is personally interested, or shall adjudicate upon any proceeding connected with or arising out of such suit.

District Judge's power of revision.

36. The District Judge may, on a petition being presented within thirty days from the date of any decree or order of a Village-munsif by any party deeming himself aggrieved by such decree or order, set aside such decree or order on the ground of corruption, gross partiality or misconduct of the Village-munsif [5][or on the ground that the Village-munsif has exercised a jurisdiction not vested in him by law] and pass such other decree or order as he thinks fit.

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[1] Rep. by the Code of Civil Procedure (14 of 1882).

[2] *See* footnote 6 on p. 527, *supra*.

[3] Subs. by the Dekkhan Agriculturists' Relief (Amendment) Act, 1927 (Bom. 7 of 1927), s. 2, for "clause (*w*)".

[4] Subs. by s. 2, *ibid.*, for "ten".

[5] Ins. by the Dekkhan Agriculturists' Relief Act, 1895 (6 of 1895), s. 11.

X of 1877. Except as provided in this Act and in section 622 of the [1]Code of Civil Procedure, every decree and order of a Village-munsif shall be final.

Power of State Government to make rules.

37. The [2][State Government] may, from time to time, by notification in the Official Gazette make rules consistent with this Act for regulating the procedure of Village-munsifs and for conferring on them or any of them all or any of the powers for the trial of suits or the execution of decrees exercised by a Civil Court under the [1]Code of Civil Procedure or any other enactment for the time being in force.

X of 1877.

CHAPTER VI.

Of Conciliation.

Appointment of Conciliators.

38. The [2][State Government] may, from time to time, appoint any person other than an officer of Police to be a Conciliator, and may cancel any such appointment.

Every Conciliator appointed under this section shall be appointed only for a term not exceeding three years, but may, on the expiration of the period for which he has been appointed, be again appointed for a further term not exceeding three years.

Every Conciliator so appointed shall exercise his functions under this Act in respect of matters affecting agriculturists residing within such local area as the [2][State Government] may, from time to time, prescribe.

[3][The expression "officer of Police" in this section shall not be deemed to include a Police patel appointed under Bombay Act No. VIII of 1867 (*for the Regulation of the Village-police in the Presidency of Bombay*).]

Matters which may be brought before Conciliator.

39. When any dispute arises as to, or there is a prospect of litigation regarding, any matter within the cognizance of a Civil Court between two or more parties one of whom is an agriculturist residing within any local area for which a Conciliator has been appointed, or when application for execution of any decree in any suit to which any such agriculturist is a party, and which was passed before the date on which this Act comes into force, is contemplated, any of the parties may apply to such Conciliator to effect an amicable settlement between them.

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[1] *See* now the Code of Civil Procedure, 1908 (Act 5 of 1908), s. 115.

[2] *See* footnote 6 on p. 527, *supra*.

[3] Ins. by the Dekkhan Agriculturists' Relief Act, 1881 (23 of 1881), s. 7.

(*Chapter VI.—Of Conciliation.*)

Procedure thereupon.

40. If the application be made by one of the parties only, the Conciliator shall take down, or cause to be taken down, in writing a concise statement of the applicant's case, and shall thereupon, by summons or by such other means as he deems fit, invite the person against whom such application is made to attend before him at a time and place to be fixed for this purpose, and shall direct the applicant also to be present at such time and place.

Day for attendance may from time to time be postponed.

If such person fails to appear at the time first fixed, the Conciliator may, if he thinks fit, from time to time extend the period for his appearance.

[1][A Conciliator empowered by the [2][State Government] in this behalf may, instead of inviting, direct the person against whom the application is made to attend at the time and place either first or subsequently fixed.

If an applicant, or a person against whom an application is made, fails to be present or attend at the time and place specified in a direction proceeding from a Conciliator under this section, he shall be deemed to have committed an offence under section 174 of the Indian Penal Code.] XLV of 1860.

When all parties appear, Conciliator to endeavour to reconcile them.

41. Whenever all the parties are present, the Conciliator shall call upon each in turn to explain his case regarding the matter in question, and shall use his best endeavours to induce them to agree to an amicable settlement or to submit such matter to arbitration.

Conciliator to hear statements of witnesses, etc.

42. The Conciliator shall hear but shall not record the statement of any witness, and shall peruse any book of account or other document produced by the parties, or so much thereof as may be necessary, and if any party or witness consents in writing to affirm any statement upon oath in any form not repugnant to justice or decency and not purporting to affect any third person, shall provide for such oath being duly taken in the presence of all the parties.

Any agreement arrived at to be reduced to writing.

43. If on the day on which the case is first heard by the Conciliator, or any subsequent day to which he may adjourn the hearing, the parties come to any agreement, either finally disposing of the matter or for referring it to arbitration, such agreement shall be forthwith reduced to writing, and shall be read and explained to the parties, and shall be signed or otherwise authenticated by the Conciliator and the parties respectively.

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[1] Ins. by the Dekkhan Agriculturists' Relief Act, 1886 (23 of 1886), s. 8.

[2] *See* footnote 6 on p. 527, *supra*.

Explanation.—A Conciliator may be appointed arbitrator under this section.

[1][44. (*1*) When the agreement is one finally disposing of the matter, the Conciliator shall forward the same in original to the Court of the Subordinate Judge of lowest grade having jurisdiction in the place where the agriculturist who is a party thereto resides, and shall at the same time deliver to each of the parties a written notice to show cause before such Judge, within one month from the date of such delivery, why such agreement ought not to be filed in such Court.

Procedure when agreement finally disposes of case and in other circumstances.

(*2*) The Court which receives the agreement shall in all cases scrutinise the same, and if it thinks that the agreement is a legal and equitable one finally disposing of the matter, and that it has not been made in fraud of the stamp or registration laws, it shall, after the expiry of the said period of one month, unless cause has been shown as aforesaid, order such agreement to be filed; and it shall then take effect as if it were a decree of the said Court passed on the day on which it is ordered to be filed and from which no appeal lies.

(*3*) If the said Court thinks that the agreement is not a legal or equitable one, or that it does not finally dispose of the matter, or that it has been made in fraud of the stamp or registration laws, it shall of its own motion issue process for the attendance of the parties, and if after such inquiry as may be deemed necessary the Court finds that such agreement is a legal and equitable one finally disposing of the matter, and that it has not been made in fraud of the stamp or registration laws, it shall order such agreement to be filed, and it shall then take effect as if it were a decree of the said Court passed on the day on which it is ordered to be filed, and from which no appeal lies.

(*4*) If, on the other hand, the said Court finds that the agreement does not constitute a legal or equitable agreement, or that it does not finally dispose of the matter, or that it has been made in fraud of the stamp or registration laws, it shall return the said agreement to the Conciliator, and such Conciliator shall thereupon be bound to furnish on demand to the parties or any one of them a certificate under section 46.

(*5*) The Court may in any case, for reasons to be recorded by it in writing, from time to time extend the period of one month allowed for showing cause under this section.]

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[1] Subs. by the Dekkhan Agriculturists' Relief Act, 1895 (6 of 1895), s. 12, for the original section.

(*Chapter VI.—Of Conciliation.*)

Procedure where agreement is for reference to arbitration.

45. When the agreement is one for referring the matter to arbitration, the Conciliator shall forward it to the Court having jurisdiction in the matter, and such Court shall cause it to be filed and proceed thereon in manner provided by sections 523 and 524 of the [1]Code of Civil Procedure. X of 1877.

Certificate to be given to applicant if conciliation fails.

46. If the person against whom any application is made before a Conciliator cannot after reasonable search be found, or if he refuses or neglects, after a reasonable period has been allowed for his appearance, to appear before the Conciliator, or if he appears but the endeavour to induce the parties to agree to an amicable settlement or to submit the matter in question to arbitration fails, the Conciliator shall, on demand, give to the applicant, or when there are several applicants to each applicant, a certificate under his hand, to that effect.

Suit, or application for execution, not to be entertained by Civil Court unless such certificate is produced.

47. No suit, and no application for execution of a decree passed before the date on which this Act comes into force, to which any agriculturist residing within any local area for which a Conciliator has been appointed is a party, shall be entertained by any Civil Court unless the plaintiff produces [2][a certificate in reference thereto obtained by him under section 46 within the year immediately preceding].

[3][*Explanation.*—The expression "Civil Court" in this section does not include a Mamlatdar's Court under Bombay Act No. III of 1876[4] (*to consolidate and amend the law relating to the powers and procedure of Mamlatdar's Courts*).]

Allowance to be made in period of limitation.

[5][**48.** In computing the period of limitation prescribed for any such suit or application the time intervening between the application made by the plaintiff under section 39 and the grant of the certificate under section 46 shall be excluded.]

[6]* * * * *

[7]**48A.** [*Repealed.*]

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[1] *See* now the Arbitration Act, 1940 (10 of 1940).

[2] Subs. by the Dekkhan Agriculturists' Relief Act, 1882 (22 of 1882), s. 13, for "such certificate as aforesaid in reference thereto".

[3] Ins. by the Dekkhan Agriculturists' Relief Act, 1881 (23 of 1881), s. 9.

[4] *See* now the Mamlatdars Courts Act, 1906 (Bom. 2 of 1906).

[5] Subs. by the Dekkhan Agriculturists' Relief Act, 1881 (23 of 1881), s. 10, for the original section.

[6] The second paragraph was rep. by the Amending Act, 1891 (12 of 1891).

[7] S. 48A which was ins. by the Bombay Repealing and Amending Act, 1910 (Bom. 1 of 1910), was rep. by the Dekkhan Agriculturists' Relief (Amendment) Act, 1912 (Bom. 1 of 1912), s. 3.

(*Chapter VI.—Of Conciliation. Chapter VII.—Superintendence and Revision.*)

49. The [1][State Government] may from time to time make rules— State Government to make rules.

(*a*) regulating the procedure before Conciliators in matters not provided for by this Act;

(*b*) fixing the charges to be made by Conciliators for anything done by them under this Chapter; and

(*c*) determining what record and accounts shall be kept by Conciliators, and what returns shall be framed and furnished by them.

CHAPTER VII.

SUPERINTENDENCE AND REVISION.

50. The District Judge shall inspect, supervise and control the proceedings, under [2][Chapter II, Chapter IV and Chapter VI] of this Act, of all Subordinate Judges and the proceedings of all Village-munsifs and Conciliators. District Judge to inspect, etc.

[3][**51.** The District Judge may—

(*a*) transfer any application pending before a Conciliator to the file of any other Conciliator; District Judge may withdraw case from Conciliator or Subordinate Judge,

(*b*) [4][transfer from the Court of one Subordinate Judge to another any suit or any agreement pending before a Subordinate Judge under section 44 of this Act; or] transfer to his own file any suit or other matter pending before the Court of any Subordinate Judge under [5][Chapter II, Chapter IV or Chapter VI] of this Act, and may dispose of the same as if he were a Subordinate Judge; or

(*c*) stay the proceedings in any such suit or matter, and sit together with such Judge as a Bench to dispose of such suit or matter in accordance with the provisions of this Act. or sit with Subordinate Judge as a Bench for trial of any case.

If the members of any Bench sitting under this section differ in opinion the opinion of the District Judge shall prevail.]

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[1] *See* footnote 1 on p. 523, *supra*.

[2] Subs. by the Dekkhan Agriculturists' Relief Act, 1882 (22 of 1882), s. 14, for "Chapter II and Chapter IV".

[3] Subs. by the Dekkhan Agriculturists' Relief Act, 1881 (23 of 1881), s. 11, for the original section.

[4] Ins. by the Dekkhan Agriculturists' Relief Act, 1895 (6 of 1895), s. 13.

[5] Subs. by Act 22 of 1882, s. 14, for "Chapter II or Chapter IV".

Appointment of Assistant or Subordinate Judges to aid District Judge.

[1][**52.** (*1*) The [2][State Government] may appoint an Assistant or Subordinate Judge to inspect and supervise, subject to the control of the District Judge, the proceedings of all Subordinate Judges under Chapter II, Chapter IV and Chapter VI of this Act, and of all Village-munsifs and Conciliators in any district or part of a district to which this Act applies:

Provided that, if the [2][State Government] thinks fit, the same Assistant or Subordinate Judge may be so appointed for two or more such districts or parts of districts or districts and parts of districts.

(*2*) The District Judge may, by order, confer upon any Assistant or Subordinate Judge appointed under this section, as regards any district or part of a district for which he is so appointed, all or any of the powers specified in the order which vest in the District Judge under section 51.]

Of revision.

53. The District Judge may, for the purpose of satisfying himself of the legality or propriety of any decree or order passed by a Subordinate Judge in any suit or other matter under [3][Chapter II, Chapter IV or Chapter VI] of this Act, and as to the regularity of the proceedings therein, call for and examine the record of such suit or matter, and pass such decree or order thereon as he thinks fit:

and any Assistant Judge or Subordinate Judge appointed by the [2][State Government] under section 52 may similarly, in any district for which he is appointed, call for and examine the record of any such suit or matter, and if he see cause therefor, may refer the same, with his remarks thereon, to the District Judge, and the District Judge may pass such decree or order on the case as he thinks fit:

Provided that no decree or order shall be reversed or altered for any error or defect or otherwise, unless a failure of justice appears to have taken place.

Special Judge.

54. The [2][State Government] from time to time may [4]* * * * * * * * appoint an officer, as Special Judge, to discharge in the place of the District Judge all the functions of the District Judge under this Act in respect of the proceedings of all Subordinate Judges, Village-munsifs and Conciliators, and may cancel any such appointment.

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[1] Subs. by the Dekkhan Agriculturists Relief Act, 1895 (6 of 1895), s. 14, for the original section.

[2] *See* footnote 6 on p. 527, *supra*.

[3] Subs. by the Dekkhan Agriculturists' Relief Act, 1882 (22 of 1882), s. 14, for "Chapter II or Chapter IV".

[4] The words "and if the G. of I, so direct shall" rep. by the Devolution Act, 1920 (38 of 1920), s. 2 and Sch. I.

(*Chapter VII.—Superintendence and Revision. Chapter VIII.—Registration by Village-Registrars.*)

Such Special Judge shall not, without the previous sanction of the [1][State Government], discharge any public function except those which he is empowered by this Act to discharge.

If any conflict of authority arises between the Special Judge and the District Judge, the High Court shall pass such order thereon consistent with this Act as it thinks fit.

No appeal shall lie from any decree or order passed by the District Judge under this Chapter, or by the Special Judge, or by an Assistant or Subordinate Judge appointed under section 52, or by a Bench, in any suit or proceeding under this Act.

[2][But the District Judge or Special Judge, or any Assistant or Subordinate Judge or Bench, may refer to the High Court, under [3]section 617 of the Code of Civil Procedure, any question of law, or usage having the force of law, or the construction of a document, arising in any case pending before him or it under this Chapter as if that case were a suit or an appeal pending before him or it; and, in respect of every reference so made, [3]sections 618 to 621 of the said Code, both inclusive, shall apply:

XIV of 1882

Provided that no reference shall be made under this section by any Assistant or Subordinate Judge, or by any Bench of which the District Judge or Special Judge is not a member, without the previous sanction of the District Judge or Special Judge, as the case may be.]

CHAPTER VIII.

REGISTRATION BY VILLAGE-REGISTRARS.

Appointment of Village-registrars.

55. The [4][State Government] may from time to time,—

(*a*) appoint such persons as it thinks fit, whether public officers or not, to be Village-registrars for such local areas as it may, from time to time, prescribe;

(*b*) direct the Village-registrar for any local area to discharge the functions of a Village-registrar for any other local areas concurrently with the Village-registrars of such other local areas; and

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[1] Subs. by the A. O. 1950 for "Provincial Govt.". These words were subs. by the A. O. 1937 for "L. G." which had been subs. by the Devolution Act, 1920 (38 of 1920), s. 2 and Sch. I, for "G. of I.".

[2] Ins. by the Dekkhan Agriculturists' Relief Act, 1882 (22 of 1882), s. 15.

[3] *See* now the Code of Civil Procedure, 1908 (5 of 1908), s. 113 and Sch. I, Order 46, rules 1 to 5.

[4] *See* footnote 6 on p. 527, *supra*.

(*c*) delegate to any person, by name or in virtue of his office, the powers conferred on it by this section;

and may cancel any such appointment, direction or delegation.

Instruments executed by agriculturist not to be deemed valid unless executed before a Village-registrar.

56. No instrument which purports to create, modify, transfer, evidence or extinguish an obligation for the payment of money or a charge upon any property, or to be a conveyance or lease, and which is executed after this Act comes into force by an agriculturist residing in any local area for which a Village-registrar has been appointed, shall be admitted in evidence for any purpose by any person having by law or consent of parties authority to receive evidence, or shall be acted upon by any such person or by any public officer, unless such instrument is written by, or under the superintendence of, and is attested by, a Village-registrar:

Provided that nothing herein contained shall prevent the admission of any instrument in evidence in any criminal proceeding, [1][or apply to any instrument which is executed by an agriculturist merely as a surety,] [2][or to any instrument required by section 17 of the [3]Indian Registration Act, 1877, to be registered under that Act.] III of 1877.

Such instruments to be written by, or under the superintendence of, a Village-registrar and executed in his presence.

[4][**57.** When any persons intend to execute any instrument to which section 56 applies, all such persons shall appear before the Village-registrar appointed for the area in which the agriculturist, or, when there are several agriculturists intending to execute the instrument, any one of such agriculturists, resides, and such registrar, after satisfying himself in such manner as he deems fit as to the identity of the intending executants and receiving the fee (if any) prescribed by the [5][State Government] in this behalf, and the stamp (if any) which may be required by law, shall write the instrument, or cause the same to be written under his superintendence; and, after reading the same aloud, or causing it to be so read, in the hearing of the intending executants, shall require them to execute it in his presence.

Attestation of such instruments.

Every instrument so written and executed shall at the time of execution be attested by the Village-registrar, and also, if any of the executants thereof is unable to read such instrument, by two respectable witnesses.

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[1] Ins. by the Dekkhan Agriculturists' Relief Act, 1881 (23 of 1881), s. 12.

[2] Ins. by the Dekkhan Agriculturists' Relief Act, 1886 (23 of 1886), s. 9.

[3] *See* now the Indian Registration Act, 1908 (16 of 1908).

[4] Subs. by Act 23 of 1881, s. 13, for the original section.

[5] *See* footnote 6 on p. 527, *supra*.

For the purposes of this section every executant of any such instrument shall appear in person before the Village-registrar; but every other party thereto may appear either in person or by any agent, being his relative, servant or dependent, whom he has duly furnished with a power-of-attorney, [1][executed and authenticated in such manner as the [2][State Government] may, from time to time, by rule prescribe,] authorizing him to appear and act on his behalf.]

Registration of instruments by Village-registrars.

58. Every Village-registrar shall keep a register of instruments executed before him in such form as shall, from time to time, be prescribed by the Inspector-General of Registration.

As soon as all the [3][intending executants have executed any instrument] before a Village-registrar, he shall make a copy of it or cause a copy of it to be made in his register, and shall deliver the original instrument to the party entitled to the custody of the same [4]* * * * *.

Previous to delivery, the original instrument [5]* * * * * shall be endorsed under the Village-registrar's signature, with the date of registration, the name and residence of the Village-registrar, and the volume and page of the register in which the instrument has been registered.

[6][A certified copy of any entry in the register shall be granted by the Village-registrar, free of charge, on the application of any party to the instrument to which the entry relates, or of his agent or representative, and the copy shall be admissible as evidence of the contents of the instrument.]

Consideration to be fully stated in every instrument executed before a Village-registrar.

59. In every instrument written by, or under the superintendence of, the Village-registrar, the amount and nature of the consideration, if any, shall be fully stated.

The Village-registrar shall also endorse upon the instrument a note under his hand, recording whether or not the transfer of the consideration stated therein, or of any part thereof, took place in his presence.

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[1] Ins. by the Dekkhan Agriculturists' Relief Act, 1882 (22 of 1882), s. 16.

[2] *See* footnote 6 on p. 527, *supra*.

[3] Subs. by the Dekkhan Agriculturists' Relief Act, 1881 (23 of 1881), s. 14, for "parties to any instrument have executed it".

[4] The words "and a certified copy thereof to the other party, or to each of the other parties if there be more than one" rep. by the Dekkhan Agriculturists' Relief Act, 1886 (23 of 1886), s. 10 (*1*).

[5] The words "and each such copy" rep. by s. 10 (*2*), *ibid*.

[6] Ins. by s. 10 (*3*), *ibid*.

Previous instruments to be produced.

If the instrument modifies, or wholly or partly supersedes, a previous instrument, such previous instrument shall be produced before the Village-registrar and shall be fully described in the instrument to be executed, and shall be marked by the Village-registrar under his hand for identification :

Production of copy of previous instrument when to be permitted.

[1][Provided that, if it is alleged that any such previous instrument is on the record or otherwise in the custody of a Court, or is lost, or has been destroyed, the Village-registrar, after ascertaining that such previous instrument was duly registered, may permit a certified copy thereof to be produced in lieu of the original; and in every such case the following procedure shall be observed, that is to say :

(*a*) the contents of the certified copy shall be fully described in the modifying or superseding instrument, and the said copy shall be marked by the Village-registrar under his hand for identification, and shall then be delivered to the person who produced it;

(*b*) if the previous instrument is lost, or has been destroyed, and the registered entry thereof is in his custody, the Village-registrar shall endorse on such entry a note under his hand as to the modification or supersession of the said instrument;

(*c*) if the previous instrument is in the custody of a Court, or if it is lost, or has been destroyed, and the registered entry thereof is in the custody of another officer, the Village-registrar shall forward a certified copy of the entry in his register relating to the modifying or superseding instrument to such Court or officer, with a report explaining the circumstances, and such Court or officer shall on receipt thereof endorse on such previous instrument or registered entry a note as to the modification or supersession of the said instrument.]

Registration under this Act to be deemed equivalent to registration under Indian Registration Act, 1877.

60. Every instrument executed and registered in accordance with the foregoing provisions shall be deemed to have been duly registered under the provisions of the [2][Indian Registration Act, 1877; and no instrument which ought to have been executed before a Village-registrar but has been otherwise executed shall be registered by any officer acting under the said Act, or in any public office, or shall be authenticated by any public officer. III of 1877.

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[1] Proviso ins. by the Dekkhan Agriculturists' Relief Act, 1902 (Bom. 1 of 1902), s. 3.

[2] *See* now the Indian Registration Act, 1908 (16 of 1908).

(Chapter VIII.—Registration by Village-registrars. Chapter VIIIA.—Registration of Instruments referred to in Section 17 of the Indian Registration Act, 1877.)

Superintendence of Village-registrars and custody and destruction of their records.

[1][**61.** (*1*) The [2][State Government] may appoint one or more officers to exercise by themselves or their subordinates a general superintendence over all Village-registrars, and may either make rules, or empower such officer or officers to make rules, from time to time, consistent with this Act, for regulating the procedings of the Village-registrars and for providing for the custody of their records.

(*2*) The [2][State Government] may, by order to be published in the [3][Official Gazette], declare that any documents other than wills remaining unclaimed in any registration office in any district or part of a district to which this Act applies, for a period exceeding two years, may be destroyed.]

Exemption of instruments to which the Govt. or any officer of the Govt. is a party.

62. Nothing in this Act shall be deemed to require any instrument, to which [4][the [5][Government]] or any officer [6][of the [5][Government]] in his official capacity is a party, to be executed before a Village-registrar [7]* * *

Power of State Government to make rules.

63. The [2][State Government] may, from time to time, make rules regulating the appointment, suspension, dismissal and remuneration of Village-registrars, and prescribing the fees to be levied by them.

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[8][CHAPTER VIIIA]

REGISTRATION OF INSTRUMENTS REFERRED TO IN SECTION 17 OF THE [9]INDIAN REGISTRATION ACT, 1877.

Mode of execution by agriculturists of instruments

III of 1877.

63A. (*1*) When an agriculturist intends to execute any instrument required by section 17 of the [8]Indian Registration Act, 1877, to be registered under that Act, he shall appear before the Sub-registrar within whose sub-

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[1] Subs. by the Dekkhan Agriculturists' Relief Act, 1895 (6 of 1895), s 15. for the original s. 61.

[2] Subs. by the A. O. 1950 for "Provincial Government" which had been subs. by the A. O. 1937 for "L. G.".

[3] Subs. by the A. O. 1937 for "Govt. Gazette".

[4] Subs. by the A. O. 1937 for "the Govt.".

[5] Subs. by the A. O. 1950 for "Crown".

[6] Subs. by the A. O. 1937 for "of Govt.".

[7] The words "or any Society registered under the Co-operative Credit Societies Act, 1904," ins. by the Bombay Repealing and Amending Act, 1920 (Bom. 1 of 1910). were rep. by the Dekkhan Agriculturists' Relief (Amendment) Act, 1912 (Bom. 1 of 1912). s. 3.

[8] Ch. VIIIA ins. by the Dekkhan Agriculturists' Relief Act, 1886 (23 of 1886), s. 11.

[9] *See* now the Indian Registration Act, 1908 (16 of 1908).

(Chapter VIIIA.—Registration of Instruments referred to in section 17 of the Indian Registration Act, 1877. Chapter IX.—Of Receipts and Statements of Account.)

required to be registered under Act III of 1877.

district the whole or some portion of the property to which the instrument is to relate is situate, and the Sub-registrar shall write the instrument, or cause it to be written, and require it to be executed, and attest it and, if the executant is unable to read the instrument, cause it to be further attested, and otherwise act in accordance with the procedure prescribed for a Village-registrar by sections 57 and 59 of this Act, and shall then register the instrument in accordance with the provisions of the [1]Indian Registration Act, 1877. III of 1877.

(*2*) An instrument to which subsection (*1*) applies shall not be effectual for any purpose referred to in section 49 of the Act last-mentioned unless it has been written, executed and attested in the manner provided in that sub-section. [2]* * * *].

CHAPTER IX.

Of Receipts and Statements of Account.

Agriculturists entitled to written receipts.

64. The person to whom any agriculturist makes any payment of money in liquidation of a debt shall, at the time of such payment, tender to such agriculturist, whether he demand the same or not, written receipt for the amount of such payment.

If such payment is made under any instrument executed before a Village-registrar, the receipt shall, if the agriculturist so require, be endorsed on the copy of the instrument furnished to him under section 58.

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[1] *See* now the Indian Registration Act, 1908 (16 of 1908).

[2] The words "Sub-section (*1*) shall not apply to any instrument to which any Society registered under the Co-operative Credit Societies Act, 1904, is a party", ins. by the Bombay Repealing and Amending Act, 1910 (Bom. 1 of 1910), were rep. by the Dekkhan Agriculturists' Relief (Amendment) Act, 1912 (Bom. 1 of 1912), s. 3.

(*Chapter IX.—Of Receipts and Statements of Account. Chapter X.—Legal Practitioners.*)

Agriculturists entitled to annual statements of account.

65. Any agriculturist by whom any money is due under any instrument shall, on such date in each year as the [1][State Government], having regard to local custom, may from time to time, by notification in the Official Gazette, fix, be entitled to receive, on demand, from the person claiming under such instrument, a statement up to that date of his account under such instrument.

Agriculturists entitled to have account made up from time to time in a pass-book.

66. Any agriculturist in whose name an account is kept by any trader or money-lender shall be entitled to receive from such trader or money-lender, on demand, a pass-book; and to require, from time to time, that his account up to date be written therein and authenticated by the signature or mark of the said trader or money-lender.

An entry so made in any such pass-book of any payment made to the trader or money-lender shall be deemed to be equivalent, for the purposes of section 64, to the grant of a receipt for the amount so entered.

No person whose account has been written in a pass-book as required by this section shall be entitled also to demand an account under section 65.

Penalty for contravention of sections 64 to 66.

67. Any person who, in contravention of section 64, 65 or 66, refuses or neglects to tender a receipt or a statement of account or a pass-book, or to write, or cause to be written, any account or any part of an account in a pass-book, or to attest the same when so written, shall be punished for each such offence with fine which may extend to one hundred rupees.

CHAPTER X.

LEGAL PRACTITIONERS.

Pleaders, etc., excluded in certain cases.

[2][**68.** No pleader, vakil or mukhtar, and no advocate or attorney of a High Court, shall be permitted to appear on behalf of any party to any case before a Conciliator or a Village-munsif [3]* * * * :

Provided that any party to any such case may be permitted, on reasonable cause being shown to the satisfaction of the Conciliator or Village-munsif, to employ any relative, servant or dependent who is not, and has not

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[1] *See* footnote 2 on p. 553, *supra*.

[2] Subs. by the Dekkhan Agriculturists' Relief Act, 1881 (23 of 1881), s. 15, for the original s. 68.

[3] The words "the subject-matter whereof does not exceed in amount or value one hundred rupees" rep. by the Dekkhan Agriculturists' Relief Act, 1882 (22 of 1882), s. 17.

previously been, a pleader, vakil or mukhtar, or an advocate or attorney of a High Court, to appear either conjointly with, or in lieu of, such party.

When a relative, servant or dependent appears in lieu of a party, he shall be furnished by him with a power-of-attorney defining the extent to which he is empowered to act.]

Power of Court to appoint pleader for agriculturist.

69. When in any suit or proceeding before a Subordinate Judge under this Act to which an agriculturist is a party, any pleader, vakil or mukhtar, or any advocate or attorney of a High Court, appears on behalf of any party opposed to such agriculturist, the Subordinate Judge, if he is of opinion that such agriculturist has not the means of obtaining proper professional assistance, may, with the consent of such agriculturist, direct the Government pleader or any other fit person (who is willing so to do) to appear on his behalf.

CHAPTER XI.

MISCELLANEOUS.

Mortgages, etc., to be valid only when written.

70. No mortgage, lien or charge of or upon any immovable property belonging to an agriculturist shall be valid unless it is created by an instrument in writing under the hand of the person creating such mortgage, lien or charge.

Nothing in this section shall apply to any mortgage, lien or charge created by mere operation of law, or in favour of the Government or of any officer of the Government in his official capacity.

Bar of application of section 258, Act XIV, 1882.

[1][**71.** The last clause of section 258 of the [2]Code of Civil Procedure shall not apply to payments out of Court made in any proceeding under this Act, in any case where an acknowledgment by the judgment-creditor for the same is produced, or when the payment is either admitted by him or proved.] XIV of 1882.

Rate of interest allowable on taking an account.

[3][**71A.** In taking an account under section 13 or any suit under this Act where interest is chargeable, such interest shall be awarded at the following rates:—

(*a*) the rate, if any, agreed upon between the parties or the persons (if any) through whom they claim, unless such rate is deemed by the Court to be unreasonable; or

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[1] S. 71 was ins. by the Dekkhan Agriculturists' Relief Act, 1895 (6 of 1895), s. 16. The original s. 71 (which was rep. by Act 23 of 1881) related to registration of mortgages executed before the passing of the Act.

[2] *See* now the Code of Civil Procedure, 1908 (5 of 1908), Sch. I, Order 21, rule 2.

[3] S. 71A ins. by Act 6 of 1895, s. 17.

(*b*) if such rate is deemed by the Court unreasonable, or if no rate was agreed upon, or, when any agreement between the parties or the persons (if any) through whom they claim, to set off profits against interest and assessment and similar charges without an account has been set aside by the Court, such rate as the Court may deem reasonable.]

Limitation.

[1][**72.** In any suit [2][of the description mentioned in section 3, clause (*w*),] for the recovery of money from a person [3]* * * * who at the time when the cause of action arose was an agriculturist [4][in any of the districts of Poona, Satara, Sholapur, and Ahmednagar], the following periods of limitation shall be deemed to be substituted for those prescribed in the second column of the Second Schedule annexed to the [5]Indian Limitation Act, 1877 (that is to say) :—

XV of 1877.

(*a*) when such suit is founded on a written instrument registered under this Act or any law in force at the date of the execution of such instrument,—twelve years;

(*b*) in any other case,—six years:

[6][Provided that nothing in this section shall—

(*i*) apply to a suit for the recovery of money from a person who is a surety merely of the principal debtor if the principal debtor was not, at the time when the cause of action arose, an agriculturist [7][in any of the districts aforesaid], or

(*ii*) revive the right to bring any suit which would have been barred by limitation if it had been instituted immediately before this Act comes into force.]]

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[1] Subs. by the Dekkhan Agriculturists' Relief Act, 1881 (23 of 1881), s. 17, for the original s. 72.

[2] Subs. by the Dekkhan Agriculturists' Relief Act, 1886 (23 of 1886), s. 12 (*1*), for "under this Act".

[3] The words "not being merely a surety for the principal debtor" rep. by s. 12 (*2*), *ibid.*

[4] Ins. by the Dekkhan Agriculturists' Relief Act, 1895 (6 of 1895), s. 18.

[5] Rep. by the Indian Limitation Act, 1908 (9 of 1908).

[6] Subs. by Act 23 of 1886, s. 12 (*3*), for the original proviso.

[7] Ins. by Act 6 of 1895, s. 18.

(*Chapter XI.—Miscellaneous.*)

Certain agricultural produce exempted from attachment, etc.

73. [*Decision as to whether person is an agriculturist, final.*] *Rep. by the Dekkhan Agriculturists' Relief Act, 1895 (VI of 1895), s. 3.*

[1][**73A.** When the Collector has taken any immovable property of a judgment-debtor or insolvent into his possession under section 22 or section 29, he may, by an order in writing, direct that any other such property not so taken shall be deemed to be reserved for the support of the judgment-debtor or insolvent and the members of his family dependent on him, and may rescind that order.

While any such order continues in force in respect of any immovable property, agricultural produce grown on that property shall not be attached or sold in execution of a decree passed whether before or after this Act comes into force, and shall not vest in the receiver appointed in any insolvency-proceedings.]

Civil Procedure Code to apply in Subordinate Judges' Courts.

74. Except in so far as it is inconsistent with this Act, the [2]Code of Civil Procedure shall apply in all suits and proceedings before Subordinate Judges under this Act. X of 1877.

Co-operative Credit Societies.

[3][**74A.** Except section 2 and section 21, the provisions of this Act shall not apply to any matter to or in which any society registered under the [4]Co-operative Credit Societies Act, 1904, is a party.] X of 1904.

Additional power to make rules.

75. The [5][State Government] may, from time to time, make all such rules as it may deem necessary for carrying out the provisions herein contained.

Rules to be published.

76. All rules made by the [5][State Government] under this Act shall be published in the Official Gazette, and shall thereupon, in so far as they are consistent with this Act, have the force of law.

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[1] S. 73A ins. by the Dekkhan Agriculturists' Relief Act, 1882 (22 of 1882), s. 18.

[2] *See* now the Code of Civil Procedure, 1908 (5 of 1908).

[3] S. 74A ins. by the Dekkhan Agriculturists' Relief (Amendment) Act, 1912 (Bom, 1 of 1912), s. 1.

[4] *See* now the Co-operative Societies Act, 1912 (2 of 1912).

[5] *See* footnote 2 on p. 553, *supra*.

THE LEGAL PRACTITIONERS ACT, 1879.

CONTENTS.

PREAMBLE.

CHAPTER I.

PRELIMINARY.

SECTIONS.

1. Short title.
   Commencement.
   Local extent.
2. [*Repealed.*]
3. Interpretation-clause.

CHAPTER II.

OF ADVOCATES, VAKILS AND ATTORNEYS.

4. Advocates and Vakils.
5. Attorneys of High Court.

CHAPTER III.

OF PLEADERS AND MUKHTARS.

6. Power to make rules as to qualifications, etc., of pleaders and mukhtars.
   Publication of rules.
7. Certificates to pleaders and mukhtars.
8. Pleaders on enrolment may practise in Courts and revenue-offices.
9. Mukhtars on enrolment may practise in Courts.
10. No person to practise as pleader or mukhtar unless qualified.
    Revenue-agents may appear, plead and act in Munsifs' Courts in suits under Bengal Act VIII of 1869.
11. Power to declare functions of mukhtars.
12. Suspension and dismissal of pleaders and mukhtars convicted of criminal offence.

SECTIONS.

13. Suspension and dismissal of pleaders and mukhtars guilty of unprofessional conduct.

14. Procedure when charge of unprofessional conduct is brought in Subordinate Court or revenue-office.

Suspension pending investigation.

15. Power to call for record in case of acquittal under section 14.

16. Power to make rules for mukhtars on appellate side of High Court.

CHAPTER IV.

OF REVENUE-AGENTS.

17. Power to make rules as to qualifications, etc., of revenue-agents. Publication of rules.

18. Certificates to revenue-agents.

19. Enrolment of revenue-agent.

20. No person to act as agent in revenue-offices unless qualified.

21. Dismissal of revenue-agent convicted of criminal offence.

22. Suspension and dismissal of revenue-agents guilty of unprofessional conduct.

23. Procedure when revenue-agent is so charged in subordinate office.

24. Power to Chief Controlling Revenue-authority to call for record.

CHAPTER V.

OF CERTIFICATES.

25. Fee for certificates.

26. Dismissed practitioners to surrender certificates.

CHAPTER VI.

OF THE REMUNERATION OF PLEADERS, MUKHTARS AND REVENUE-AGENTS.

27. High Court and Chief Controlling Revenue-authority to fix fees on civil and revenue proceedings.

Exception as to agents mentioned in section 20.

28 to 31. [*Repealed.*]

CHAPTER VII.

PENALTIES.

SECTIONS.

32. On persons illegally practising as pleaders, mukhtars or revenue-agents.

33. On suspended or dismissed pleader, etc., failing to deliver certificate.

34. On suspended or dismissed practitioner practising during suspension or after dismissal.

35. Revision of fines.

36. Power to frame and publish lists of touts.

CHAPTER VIII.

MISCELLANEOUS.

37. State Government to appoint examiners.

38. Exemption of High Court practitioners from certain parts of Act.

39. Suspension or dismissal of person holding mukhtar and revenue-agent's certificates.

40. Pleaders, etc., not to be suspended or dismissed without being heard

41. Power for certain High Courts to enrol advocates.

42. [*Repealed.*]

THE FIRST SCHEDULE.—[*Repealed.*]

THE SECOND SCHEDULE.—VALUE OF STAMPS FOR CERTIFICATES.

(*Chapter I.—Preliminary.*)

ACT No. XVIII of 1879.[1]

[*29th October 1879.*]

An Act to consolidate and amend the law relating to Legal Practitioners.

Preamble.

WHEREAS it is expedient to consolidate and amend the law relating to Legal Practitioners in [2][certain Provinces, and to empower the Provincial Government of every other Province to extend thereto] such portions of this Act as such Government may think fit; It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

Short title. Commencement.

1. This Act may be called the Legal Practitioners Act, 1879; and shall come into force on the first day of January 1880.

Local extent.

This section and section 2 extend to [3][the whole of India ~~except~~ Part B States].

~~The rest of this Act~~ extends, in the first instance, only to [4][Bengal, Uttar Pradesh, Punjab, Bihar, Madhya ~~Pradesh, Assam,~~ Orissa and Delhi. But the State Government of any other State] may from time to time, by noti-

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[1] For the Statement of Objects and Reasons, *see* Gazette of India, 1878, Pt. V, p. 381; for the Reports of the Select Committee, *see ibid.* 1879, Pt. V, pp. 51 and 841; for Proceedings in Council, *see ibid*, 1878, Supplement, pp. 1658 and 1693; *ibid.*, 1879, Supplement, pp. 79, 1066 and 1375.

This Act has been extended to Berar by the Berar Laws Act, 1941 (4 of 1941). It has been declared to be in force in the Angul District by the Angul Laws Regulation, 1936 (5 of 1936), s. 3 and Sch., and also by notification under s. 3 (*a*) of the Scheduled Districts Act, 1874 (14 of 1874), in the Districts of Hazaribagh, Lohardaga and Manbhum and Pargana Dhalbhum and the Kolhan in the District of Singbhum, *see* Gazette of India, 1881, Pt. I, p. 504. The District of Lohardaga (now called the Ranchi District, *see* Calcutta Gazette, 1889, Pt. I, p. 44) included at this time the District of Palamau, which was separated in 1894.

It has been amended in its application to—

Bengal by Bengal Act 5 of 1942;
C. P. and Berar by C. P. & Berar Act 25 of 1939;
Madras by Madras Acts 3 of 1943, 14 of 1944 and 9 of 1947;
Orissa by Orissa Act 6 of 1938; and
U. P. by U. P. Acts 4 of 1925 and 4 of 1936.

[2] Subs. by the A. O. 1948 for "the Lower Provinces of Bengal, the North-Western Provinces, the Punjab, Oudh, the Central Provinces and Assam, and to empower each of the Local Governments of the rest of British India to extend to the territories administered by it".

[3] Subs. by the A. O. 1950 for the words "all the Provinces of India" which had been Subs. by the A. O. 1948 for "the whole of British India".

[4] The original words have successively been amended by the A. O. 1937, A. O. 1948 and A. O. 1950 to read as above.

~~fication in the~~ Official Gazette, extend[1] all or any of the provisions of the rest of this Act to the whole or ~~any part of~~ [2]~~[that~~ [3][~~State~~] ~~].~~ Ins. No. 100 of 1950, sec. 7 and Sch.

2. [*Repeal of enactments.*] *Rep. by the Repealing Act, 1938 (I of 1938), s. 2 and Sch.*

3. In this Act, unless there be something repugnant in the subject or context,— Interpretation-clause.

"Judge" means the presiding judicial officer in every Civil and Criminal Court, by whatever title he is designated:

"Subordinate Court" means all Courts subordinate to the High Court, including Courts of Small Causes established under Act No. IX of 1850[4] or Act No. XI of 1865[5].

"revenue-office" includes all Courts (other than Civil Courts) trying suits under any Act for the time being in force relating to land-holders and their tenants or agents:

"legal practitioner" means an advocate, vakil or attorney of any High Court, a pleader, mukhtar or revenue-agent:

[6]["tout" means a person—

(*a*) who procures, in consideration of any remuneration moving from any legal practitioner, the employment of the legal practitioner in any legal business; or who proposes to any legal practitioner or to any person interested in any legal business to procure, in consideration of any remuneration moving from either of them, the employment of the legal practitioner in such business; or

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[1] Under this power, the Act has been extended, subject to certain omissions, and so far only as it relates to Judicial Courts, Civil and Criminal, to the Madras Presidency, except the Scheduled Districts, from 1st April 1882, *see* Fort St. George Gazette, 1881, Pt. I, pp. 491 and 707. Ss. 3 and 4 of the Act have been extended to the Regulation Districts of the Bombay Presidency, *see* Bombay Government Gazette, 1885, Pt. I, p. 290; and ss. 13 [except clauses (*a*), (*b*), (*c*), (*d*) and (*f*) thereof], 34, 36 and 40 have been extended to the whole of the Bombay Presidency (Bombay Gazette, 1904, Pt. I, p. 1635). Ch. I, s. 40, Sch. II, and so much of Chs. III, V, VI, and VII as relates to pleaders, have been extended to Coorg, *see* Mysore Gazette, 1879, Pt. I, p. 355; *see* also Coorg District Gazette, 1891, Pt. I, p. 140, for notification extending ss. 4, 5 and 38; Coorg District Gazette, 1899, Pt. I, p. 122 for notification extending ss. 3, 13 and 36 as amended by Act XI of 1896 so far as they relate to pleaders; and Coorg Gazette, 1935, Pt. I, p. 2, for notification extending ss. 4 and 41. Ss. 4 and 41 have been extended to Ajmer-Merwara *see* Gazette of India, 1927, Part II-A, p. 214.

[2] Subs. by the A. O. 1948 for "the territories under its administration".

[3] Subs. by the A. O. 1950 for "Province".

[4] *See* now the Presidency Small Cause Courts Act, 1882 (15 of 1882).

[5] *See* now the Provincial Small Cause Courts Act, 1887 (9 of 1887).

[6] Subs. by the Legal Practitioners (Amendment) Act, 1926 (15 of 1926), s. 2, for the original definition.

(*b*) who for the purposes of such procurement frequents the precincts of Civil or Criminal Courts or of revenue-offices, or railway stations, landing stages, lodging places or other places of public resort.]

CHAPTER II.

Of Advocates, Vakils and Attorneys.

Advocates and Vakils.

4. Every person now or hereafter entered as an advocate or vakil on the roll of any High Court under the letters patent constituting such Court, or [1][under section 41 of this Act], [2][or enrolled as a pleader in the Chief Court of the Punjab under section 8 of this Act], shall be entitled to practise in all the Courts subordinate to the Court on the roll of which he is entered, and in all revenue-offices situate within the local limits of the appellate jurisdiction of such Court, subject, nevertheless, to the rules in force relating to the language in which the Court or office is to be addressed by pleaders or revenue-agents; and any person so entered who ordinarily practises in the Court on the roll of which he is entered or some Court subordinate thereto shall, notwithstanding anything herein contained, be entitled, as such, to practise in any Court in [3][Part A States and Part C States] other than a High Court on whose roll he is not entered, or, with the permission of the Court, [4][or in the case of a High Court in respect of which the Indian Bar Councils Act, 1926, is in force, subject to rules made under that Act] in any High Court on whose roll he is not entered, and in any revenue-office: XXXVIII of 1926.

Provided that no such vakil [5][or pleader] shall be entitled to practise under this section before a Judge of the High Court, Division Court or High Court exercising original jurisdiction in a Presidency-town.

Attorneys of High Court.

5. Every person now or hereafter entered as an attorney on the roll of any High Court shall be entitled to practise in all the Courts sub-ordinate to such High Court and in all revenue-offices situate within the local limits

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[1] Subs. by the Legal Practitioners Act, 1884 (9 of 1884), s. 2, for "as an advocate on the roll of the Chief Court of the Punjab".

[2] Ins. by the Legal Practitioners (Amendment) Act, 1908 (1 of 1908), s. 2 (*a*).

[3] Subs. by the A. O. 1950 for "the Provinces" which had been subs. by the A. O 1948 for "British India".

[4] Ins. by the Indian Bar Councils Act, 1926 (38 of 1926), s. 19 and Sch.

[5] Ins. by the Legal Practitioners (Amendment) Act, 1908 (1 of 1908), s. 2 (*b*).

of the appellate jurisdiction of such High Court, and every person so entered who ordinarily practises in the Court on the roll of which he is so entered or some Court subordinate thereto shall, notwithstanding anything herein contained, be entitled, as such, to practise in any Court in [1][~~Part A States and Part C-States~~] other than a High Court established by Royal Charter on the roll of which he is not entered and in any revenue-office.

The High Court of the [2][State] in which an attorney practises under this section may, from time to time, make rules declaring what shall be deemed to be the functions, powers and duties of an attorney so practising.

CHAPTER III.

Of Pleaders and Mukhtars.

Power to make rules as to qualifications, etc., of pleaders and mukhtars.

6. The High Court may, from time to time, make rules consistent with this Act as to the following matters (namely) :—

(*a*) the qualifications, admission and certificates of proper persons to be pleaders of the subordinate Courts, and of the revenue-offices situate within the local limits of its appellate jurisdiction, and, in the case of a High Court not established by Royal Charter, [3][in respect of which the Indian Bar Councils Act, 1926, is not in force] of such Court;

XXXVIII of 1926.

(*b*) the qualifications, admission and certificates of proper persons to be mukhtars of the subordinate Courts, and, in the case of a High Court not established by Royal Charter, [3][in respect of which the Indian Bar Councils Act, 1926, is not in force] of such Court;

XXXVIII of 1926.

(*c*) the fees to be paid for the examination and admission of such persons; and

(*d*) suspension and dismissal of such pleaders and mukhtars.

Publication of rules.

All such rules shall be published in the [4][Official Gazette], and shall thereupon have the force of law: Provided that, in the case of rules made by a High Court not established by Royal Charter, such rules have been previously approved by the [5][State Government].

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[1] *See* footnote 3 on p. 564, *supra*.
[2] Subs. by the A. O. 1950 for "province".
[3] Ins. by the Indian Bar Councils Act, 1926 (38 of 1926, s. 19, and Sch.
[4] Subs. by the A. O. 1937 for "local official Gazette".
[5] *See* footnote 2 on p. 553, *supra*.

Certificates to pleaders and mukhtars.

7. On the admission, under section 6, of any person as a pleader or mukhtar, the High Court shall cause a certificate, signed by such officer as the Court, from time to time, appoints in this behalf, to be issued to such person, authorizing him to practise up to the end of the current year in the Courts and, in the case of a pleader, also the revenue-offices specified therein.

At the expiration of such period, the holder of the certificate, if he desires to continue to practise, shall, subject to any rules consistent with this Act which may, from time to time, be made by the High Court in this behalf, be entitled to have his certificate renewed by the Judge of the District Court within the local limits of whose jurisdiction he then ordinarily practises, or by such officer as the High Court, from time to time, appoints in this behalf.

On every such renewal, the certificate then in possession of such pleader or mukhtar shall be cancelled and retained by such Judge or officer.

Every certificate so renewed shall be signed by such Judge or officer, and shall continue in force up to the end of the current year.

Every Judge or officer so renewing a certificate shall notify such renewal to the High Court.

[1][Provided that, on the admission as a pleader of any person who has been previously entered as a vakil or attorney on the roll of a High Court established by Royal Charter, the High Court may in its discretion issue to such person a certificate authorizing him to practise permanently in the Courts and in the offices specified therein, and a certificate so issued shall not require to be renewed under this section.]

Pleaders on enrolment may practise in Courts and revenue-offices.

8. Every pleader holding a certificate issued under section 7 may apply to be enrolled in any Court or revenue-office mentioned therein and situate within the local limits of the appellate jurisdiction of the High Court by which he has been admitted; and, subject to such rules consistent with this Act as the High Court or the Chief Controlling Revenue-authority[2] may, from time to time, make in this behalf, the presiding Judge or officer shall enrol him accordingly: and thereupon he may appear, plead and act in such Court or office and in any Court or revenue-office subordinate thereto.

Mukhtars on enrolment may practise in Courts.

9. Every mukhtar holding a certificate issued under section 7 may apply to be enrolled in any Civil or Criminal Court mentioned therein and situate within the same limits; and, subject to such rules as the High Court

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[1] Ins. by the Legal Practitioners (Amendment) Act, 1908 (1 of 1908), s. 3.
[2] For definition, *see* the General Clauses Act, 1897 (10 of 1897), s. 3 (10).

may from time to time make in this behalf, the presiding Judge shall enrol him accordingly; and thereupon he may practise as a mukhtar in any such Civil Court and any Court subordinate thereto, and may (subject to the provisions of the Code of Criminal Procedure[1]) appear, plead and act in any such Criminal Court and any Court subordinate thereto.

10. Except as provided by this Act or any other enactment for the time being in force, no person shall practise as a pleader or mukhtar in any Court not established by Royal Charter unless he holds a certificate issued under section 7 and has been enrolled in such Court or in some Court to which it is subordinate:

No person to practise as pleader or mukhtar unless qualified.

Provided that persons who have been admitted as Revenue-agents before the first day of January 1880, and hold certificates, as such, under this Act in the territories administered by the Lieutenant Governor of Bengal, may be enrolled in manner provided by section 9 in any Munsif's Court in the said territories, and on being so enrolled may appear, plead and act in such Court in suits under Bengal Act VIII of 1869[2] (*to amend the procedure in suits between Landlord and Tenant*) or under any other Act for the time being in force regulating the procedure in suits between landholders and their tenants and agents.

Revenue-agents may appear, plead and act in Munsifs' Courts in suits under Bengal Act VIII of 1869.

11. Notwithstanding anything contained in the Code of Civil Procedure[3], the High Court may, from time to time, make rules declaring what shall be deemed to be the functions, powers and duties of mukhtars practising in the subordinate Courts, and, in the case of a High Court not established by Royal Charter, in such Court.

Power to declare functions of mukhtars.

12. The High Court may suspend or dismiss any pleader or mukhtar holding a certificate issued under section 7 who is convicted of any criminal offence implying a defect of character which unfits him to be a pleader or mukhtar, as the case may be.

Suspension and dismissal of pleaders and mukhtars convicted of criminal offence.

[4][**13.** The High Court may also, after such inquiry as it thinks fit, suspend or dismiss any pleader or mukhtar holding a certificate as aforesaid—

Suspension and dismissal of pleaders and mukhtars guilty of unprofessional conduct.

(*a*) who takes instructions in any case except from the party on whose behalf he is retained, or some person who is the recognized

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[1] *See* now the Code of Criminal Procedure, 1898 (Act 5 of 1898).
[2] *See* now the Bengal Tenancy Act, 1885 (8 of 1885).
[3] *See* now the Code of Civil Procedure, 1908 (Act 5 of 1908).
[4] Subs. by the Legal Practitioners Act, 1896 (11 of 1896), s. 2, for the original section.

agent of such party within the meaning of the Code of Civil Procedure[1], or some servant, relative or friend authorized by the party to give such instructions, or

(*b*) who is guilty of fraudulent or grossly improper conduct in the discharge of his professional duty, or

(*c*) who tenders, gives or consents to the retention, out of any fee paid or payable to him for his services, of any gratification for procuring or having procured the employment in any legal business of himself or any other pleader or mukhtar, or

(*d*) who, directly or indirectly, procures or attempts to procure the employment of himself as such pleader or mukhtar through, or by the intervention of, any person to whom any remuneration for obtaining such employment has been given by him, or agreed or promised to be so given, or

(*e*) who accepts any employment in any legal business through a person who has been proclaimed as a tout under section 36, or

(*f*) for any other reasonable cause.]

Procedure when charge of unprofessional conduct is brought in subordinate Court or revenue-office.

14. If any such pleader or mukhtar practising in any subordinate Court or in any revenue-office is charged in such Court or office with taking instructions except as aforesaid, or with any such misconduct as aforesaid, the presiding officer shall send him a copy of the charge and also a notice that, on a day to be therein appointed, such charge will be taken into consideration.

Such copy and notice shall be served upon the pleader or mukhtar at least fifteen days before the day so appointed.

On such day, or on any subsequent day to which the enquiry may be adjourned, the presiding officer shall receive and record all evidence properly produced in support of the charge, or by the pleader or mukhtar, and shall proceed to adjudicate on the charge.

If such officer finds the charge established and considers that the pleader or mukhtar should be suspended or dismissed in consequence, he shall record his finding and the grounds thereof, and shall report the same to the High Court; and the High Court may acquit, suspend or dismiss the pleader or mukhtar.

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[1] *See* now the Code of Civil Procedure, 1908 (Act 5 of 1908).

(*Chapter III.—Of Pleaders and Mukhtars.*)

Suspension pending investigation.

Any District Judge, or with his sanction any Judge subordinate to him, [1][any Judge of a Court of Small Causes of a Presidency-town,] any District Magistrate, or with his sanction any Magistrate subordinate to him, and any Revenue-authority not inferior to a Collector, or with the Collector's sanction any revenue-officer subordinate to him, may, pending the investigation and the orders of the High Court, suspend from practice any pleader or mukhtar charged before him or it under this section.

Every report made to the High Court under this section shall—

(*a*) when made by any Civil Judge subordinate to the District Judge, be made through such Judge;

(*b*) when made by a Magistrate subordinate to the Magistrate of the District,[2] be made through the Magistrate of the District[2] and the Sessions Judge;

(*c*) when made by the Magistrate of the District[2], be made through the Sessions Judge;

(*d*) when made by any Revenue-officer subordinate to the Chief Controlling Revenue-authority[3], be made through such Revenue-authorities as the Chief Controlling Revenue-authority[3] may, from time to time, direct.

Every such report shall be accompanied by the opinion of each Judge, Magistrate or Revenue-authority through whom or which it is made.

Power to call for record in case of acquittal under section 14.

15. The High Court, in any case in which a pleader or mukhtar has been acquitted under section 14 otherwise than by an order of the High Court, may call for the record and pass such order thereon as it thinks fit.

Power to make rules for mukhtars on appellate side of High Court.

16. Notwithstanding anything contained in any letters patent or in the Code of Civil Procedure[4], section 37, clause (*a*), any High Court established by Royal Charter may, from time to time, make rules consistent with this Act as to the following matters (namely):—

(*a*) the qualifications and admission of proper persons to be mukhtars practising on the appellate side of such Court;

(*b*) the fees to be paid for the examination and admission of such persons;

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[1] Ins. by the Legal Practitioners Act, 1884 (9 of 1884), s. 4.

[2] *Read*: District Magistrate, *see* s. 3 (2) of the Code of Criminal Procedure, 1898 (Act 5 of 1898).

[3] For definition, *see* the General Clauses Act, 1897 (10 of 1897), s. 3 (10).

[4] *See* now the Code of Civil Procedure, 1908 (Act 5 of 1908).

(*c*) the security which they may be required to give for their honesty and good conduct;

(*d*) the suspension and dismissal of such mukhtars; and

(*e*) declaring what shall be deemed to be their functions, powers and duties;

and may prescribe and impose fines for the infringement of such rules, not exceeding in any case five hundred rupees; and such fines, when imposed, may be recovered as if they had been imposed in the exercise of the High Court's ordinary original criminal jurisdiction.

CHAPTER IV.

OF REVENUE-AGENTS.

Power to make rules as to qualifications, etc., of revenue-agents.

17. The Chief Controlling Revenue-authority[1] may, from time to time, make rules consistent with this Act as to the following matters (namely) :—

(*a*) the qualifications, admission and certificates of proper persons to be revenue-agents;

(*b*) the fees to be paid for the examination and admission of such persons;

(*c*) the suspension and dismissal of such revenue-agents; and

(*d*) declaring what shall be deemed to be their functions, powers and duties.

Publication of rules.

All such rules shall be published in the [2][Official Gazette], and shall thereupon have the force of law.

Certificates to revenue-agents.

18. On the admission of any person as a revenue-agent under section 17, the Chief Controlling Revenue-authority[1] shall cause a certificate, signed by such officer as such Authority from time to time appoints in this behalf, to be issued to such person, authorizing him to practise up to the end of the current year in such revenue-offices as may be specified therein.

At the expiration of such period, the holder of the certificate, if he desires to continue to practise, shall be entitled to have his certificate renewed by

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[1] For definition, *see* the General Clauses Act, 1897 (10 of 1897), s. 3 (10).
[2] Subs. by the A. O. 1937 for "local official Gazette".

(*Chapter IV.—Of Revenue-agents.*)

the Secretary of the Chief Controlling Revenue-authority,[1] or by any other officer authorized by such Authority in that behalf.

On every such renewal, the certificate then in the possession of such revenue-agent shall be cancelled and retained by such Secretary or other officer.

Every certificate so renewed shall be signed by such Secretary or other officer and shall continue in force to the end of the current year.

Every officer so renewing a certificate shall notify the renewal to the Chief Controlling Revenue-authority[1].

Enrolment of revenue-agent.

19. Every revenue-agent holding a certificate issued under section 18 may apply to be enrolled in any revenue-office mentioned therein and situate within the limits of the territory under the Chief Controlling Revenue-authority[1]; and subject to such rules as the Chief Controlling Revenue-authority[1] may, from time to time, make in this behalf, the officer presiding in such office shall enrol him accordingly, and thereupon he may practise as a revenue-agent in such office and in any revenue-office subordinate thereto.

No person to act as agent in revenue-offices unless qualified.

20. Except as provided by this Act or any other enactment for the time being in force, no person, other than a pleader duly qualified under the provisions hereinbefore contained, shall practise as a revenue-agent in any revenue-office, unless he holds a certificate issued under section 18 and has been enrolled in such office or some other office to which it is subordinate:

Provided that any person duly authorized in this behalf may, with the sanction of the Chief Controlling Revenue-authority[1], or of an officer empowered by the [2][State Government] in this behalf, transact all or any business in which his principal may be concerned in any revenue-office.

The sanction mentioned in this section may be general or special, and may at any time be revoked or suspended by the Authority or officer granting the same.

Dismissal of revenue-agent convicted of criminal offence.

21. The Chief Controlling Revenue-authority[1] may suspend or dismiss any revenue-agent holding a certificate issued under this Act who is convicted of any criminal offence implying a defect of character which unfits him to be a revenue-agent.

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[1] For definition, *see* the General Clauses Act, 1897 (10 of 1897), s. 3 (10)

[2] *See* footnote 2 on p. 553, *supra*.

(*Chapter IV.—Of Revenue-agents.*)

Suspension and dismissal of revenue-agents guilty of unprofessional conduct.

[1][22. The Chief Controlling Revenue-authority[2] may also, after such inquiry as it thinks fit, suspend or dismiss any revenue-agent holding a certificate as aforesaid—

(*a*) who is guilty of fraudulent or grossly improper conduct in the discharge of his professional duty, or

(*b*) who tenders, gives or consents to the retention, out of any fee paid or payable to him for his services, of any gratification for procuring or having procured the employment in any legal business of himself or any other revenue-agent, or

(*c*) who, directly or indirectly, procures or attempts to procure the employment of himself as such revenue-agent through, or by the intervention of, any person to whom any remuneration for obtaining such employment has been given by him, or agreed or promised to be so given, or

(*d*) who accepts any employment in any legal business through a person who has been proclaimed as a tout under section 36, or

(*e*) for any other reasonable cause.]

Procedure when revenue-agent is so charged in subordinate office.

23. If any revenue-agent holding a certificate issued under this Act is charged with any such conduct in any office subordinate to the Chief Controlling Revenue-authority[2], or in the Court of any Munsif, the officer at the head of such office, or such Munsif, as the case may be, shall send him a copy of the charge, and also a notice that, on a day to be therein appointed, such charge will be taken into consideration.

Such copy and notice shall be served upon the person charged at least fifteen days before the day so appointed. On such day or on any other day to which the inquiry may be adjourned, the officer or Munsif shall receive all evidence properly produced in support of the charge, or by the person charged, and shall proceed to adjudicate on the charge.

If the officer or Munsif finds the charge established, and considers that the person charged should be suspended or dismissed in consequence, he shall record his finding and the grounds thereof, and report the same to the Chief Controlling Revenue-authority[2]; and such Authority shall proceed to acquit, suspend or dismiss him.

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[1] Subs by the Legal Practitioners Act, 1896 (11 of 1896), s. 3, for the original section.

[2] For definition, *see* the General Clauses Act, 1897 (10 of 1897), s. 3 (10).

(*Chapter IV.—Of Revenue-agents. Chapter V.—Of Certificates.*)

Any Revenue-officer not inferior to a Collector, and with the Collector's sanction, any Revenue-officer subordinate to him, or any Munsif in his district, may, pending the investigation and the orders of the Chief Controlling Revenue-authority[1], suspend from practice any revenue-agent charged before him under this section.

Where any officer acting under this section is subordinate to the Commissioner of a Division, he shall transmit the report through such Commissioner, who shall forward with the same an expression of his own opinion on the case.

Power to Chief Controlling Revenue-authority to call for record.

24. The Chief Controlling Revenue-authority[1], in any case in which a Revenue-agent has been acquitted under section 23 otherwise than by an order of the Chief Controlling Revenue-authority[1], may call for the record and pass such order thereon as seems fit.

CHAPTER V.

OF CERTIFICATES.

Fee for certificates.

25. Every certificate, whether original or renewed, issued under this Act shall be written upon stamped paper of the value prescribed therefor in the second schedule hereto annexed [2][and of such description as the [3][State Government] may, from time to time, prescribe]:

Provided that a certificate issued on or after the first day of July in any year may be written on stamped paper of half the value so prescribed:

[4][Provided also that no stamped paper shall be required in the case of a certificate, whether original or renewed, authorizing, under section 7, a vakil or attorney on the roll of a High Court established by Royal Charter to practise as a pleader.]

Dismissed practitioners to surrender certificates.

26. When any pleader, mukhtar or revenue-agent is suspended or dismissed under this Act, he shall forthwith deliver up his certificate to the Court or officer at the head of the office before or in which he was practising at the time he was so suspended or dismissed, or to any Court or officer to which the High Court or Chief Controlling Revenue-authority[1] (as the case may be) orders him to deliver the same.

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[1] For definition, *see* the General Clauses Act, 1897 (10 of 1897), s. 3 (10).
[2] Ins. by the Legal Practitioners Act, 1884 (9 of 1884), s. 5.
[3] *See* footnote 2 on p. 553, *supra*.
[4] Ins. by the Legal Practitioners (Amendment) Act, 1908 (1 of 1908), s. 4.

(*Chapter VI.—Of the Remuneration of Pleaders, Mukhtars and Revenue-agents. Chapter VII—Penalties.*)

CHAPTER VI.

OF THE REMUNERATION OF PLEADERS, MUKHTARS AND REVENUE-AGENTS.

High Court and Chief Controlling Revenue-authority to fix fees on civil and revenue-proceedings.

27. The High Court shall, from time to time, fix and regulate the fees payable by any party in respect of the fees of his adversary's advocate, pleader, vakil, mukhtar or attorney upon all proceedings (*a*) on the appellate side of such Court, (*b*) in the case of a High Court not established by Royal Charter, on its original side, and (*c*) in sub-ordinate Courts, [1][and in respect of the fees of his adversary's revenue-agent appearing, pleading or acting under section 10].

The Chief Controlling Revenue-authority[2] shall, from time to time, fix and regulate the fees payable upon all proceedings in the revenue-offices by any party in respect of the fees of his adversary's advocate, pleader, vakil, attorney, mukhtar or revenue-agent.

Tables of the fees so fixed shall be published in the [3][Official Gazette].

Exception as to agents mentioned in section 20.

Nothing in this section applies to the agents mentioned in the proviso to section 20.

28 to 31. [*Agreements with clients. Power to modify or cancel agreements. Agreements to exclude further claims. Reservation of responsibility for negligence.*] *Rep. by the Legal Practitioners (Fees) Act, 1926 (XXI of 1926).*

CHAPTER VII.

PENALTIES.

On persons illegally practising as pleaders, mukhtars or revenue-agents.

32. Any person who practises in any Court or revenue-office in contravention of the provisions of section 10 or section 20 shall be liable, by order of such Court or the officer at the head of such office, to a fine not exceeding ten times the amount of the stamp required by this Act for a certificate authorizing him so to practise in such Court or office, and, in default of payment, to imprisonment in the civil jail for a term which may extend to six months.

He shall also be incapable of maintaining any suit for, or enforcing any lien with respect to, any fee or reward for, or with respect to, anything done or any disbursement made by him as pleader, mukhtar or revenue-agent, while he has been contravening the provisions of either of such sections.

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[1] Ins. by the Legal Practitioners Act, 1884 (9 of 1884), s. 6.
[2] For definition, *see* the General Clauses Act, 1897 (10 of 1897), s. 3 (10)
[3] Subs. by the A. O. 1937 for "local official Gazette".

(*Chapter VII.--Penalties.*)

33. Any pleader, mukhtar or revenue-agent failing to deliver up his certificate as required by section 26 shall be liable, by order of the Court, Authority or officer to which or to whom, or according to whose orders, the delivery should be made, to a fine not exceeding two hundred rupees, and in default of payment to imprisonment in the civil jail for a term which may extend to three months.

On suspended or dismissed pleader, etc., failing to deliver certificate.

34. Any pleader, mukhtar or revenue-agent who, under the provisions of this Act, has been suspended or dismissed, and who, during such suspension or after such dimissal, practises as a pleader, mukhtar or revenue-agent in any Court or revenue-office, shall be liable, by order of such Court or the officer at the head of such office, to a fine not exceeding five hundred rupees, and in default of payment to imprisonment in the civil jail for a term which may extend to six months.

On suspended or dismissed practitioner practising during suspension or after dismissal.

35. Every order under section 32, 33 or 34 shall be subject to revision by the High Court where the order has been passed by a sub-ordinate Court, and by the Chief Controlling Revenue-authority[1] where the order has been passed by an officer subordinate to such Authority.

Revision of fines.

[2]**[36.** (*1*) Every High Court, District Judge, Sessions Judge, District Magistrate and Presidency Magistrate, every Revenue-officer, not being below the rank of a Collector of a district, and the Chief Judge of every Presidency Small Cause Court (each as regards their or his own Court and the Courts, if any, subordinate thereto), may frame and publish lists of persons proved to their or his satisfaction, [3][or to the satisfaction of any subordinate Court as provided in sub-section (2A)] by evidence of general repute or otherwise, habitually to act as touts, and may, from time to time, alter and amend such lists.

Power to frame and publish lists of touts.

[3][*Explanation.*—The passing of a resolution, declaring any person to be or not to be a tout, by a majority of the members present at a meeting, specially convened for the purpose, of an association of persons entitled to practise as legal practitioners in any Court or revenue-office, shall be evidence of the general repute of such person for the purposes of this sub-section.]

(*2*) No person's name shall be included in any such list until he shall have had an opportunity of showing cause against such inclusion.

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[1] For definition, *see* the General Clauses Act, 1897 (10 of 1897), s. 3 (10).

[2] Subs. by the Legal Practitioners Act, 1896 (11 of 1896), s. 4, for the original section.

[3] Ins. by the Legal Practitioners (Amendment) Act, 1926 (15 of 1926), s. 3.

[1][(*2A*) Any authority empowered under sub-section (*1*) to frame and publish a list of touts may send to any Court subordinate to such authority the names of any persons alleged or suspected to be touts, and order that Court to hold an inquiry in regard to such persons; and the subordinate Court shall thereupon hold an inquiry into the conduct of such persons and, after giving each such person an opportunity of showing cause as provided in sub-section (*2*), shall report to the authority which has ordered the inquiry the name of each such person who has been proved to the satisfaction of the subordinate Court to be a tout; and that authority may include the name of any such person in the list of touts framed and published by that authority:

Provided that such authority shall hear any such person who, before his name has been so included, appears before it and desires to be heard.]

(*3*) A copy of every such list shall be kept hung up in every Court to which the same relates.

(*4*) The Court or Judge may, by general or special order, exclude from the precincts of the Court any person whose name is included in any such list.

(*5*) Every person whose name is included in any such list shall be deemed to be proclaimed as a tout within the meaning of section 13, clause (*e*), and section 22, clause (*d*).]

[1][(*6*) Any person who acts as a tout whilst his name is included in any such list shall be punishable with imprisonment which may extend to three months, or with fine which may extend to five hundred rupees, or with both.]

CHAPTER VIII.

MISCELLANEOUS.

State Government to appoint examiners.

37. To facilitate the ascertainment of the qualifications mentioned in sections 6 and 17 respectively, the [2][State Government] shall, from time to time, appoint persons to be examiners for the purposes aforesaid, and may, from time to time, make regulations for conducting such examinations.

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[1] Sub-sections (*2A*) and (*6*) were ins. by the Legal Practitioners (Amendment) Act, 1926 (15 of 1926), s. 3.

[2] *See* footnote 2 on p. 553, *supra*.

38. Except as provided by sections 4, 5, [1][7,] 16, [1][25,] 27, 32 and 36, nothing in this Act applies to advocates, vakils and attorneys admitted and enrolled by any High Court under the letters patent by which such Court is constituted, or to mukhtars practising in such Court or to advocates enrolled [2][under section 41 of this Act] [3][and, except as provided by section 36, nothing in this Act applies to persons enrolled as advocates of any High Court under the Indian Bar Councils Act, 1926].

XXXVIII of 1926.

Exemption of High Court practitioners from certain parts of Act.

39. When any person who holds a certificate as a mukhtar under section 7 and a certificate as a revenue-agent under section 18 is suspended or dismissed in one of such capacities, he shall be deemed to be suspended or dismissed as the case may be, also in the other.

Suspension or dismissal of person holding mukhtar and revenue-agent's certificates.

40. Notwithstanding anything hereinbefore contained, no pleader, mukhtar or revenue-agent shall be suspended or dismissed under this Act unless he has been allowed an opportunity of defending himself before the Authority suspending or dismissing him.

Pleaders, etc., not to be suspended or dismissed without being heard.

[4][**41.** (*1*) A High Court not established by Royal Charter [3][in respect of which the Indian Bar Councils Act, 1926, is not in force] may, from time to time, with the previous sanction of the [5][State Government], make rules as to the qualifications and admission of proper persons to be advocates of the Court, and, subject to such rules, may enrol such and so many advocates as it thinks fit.

XXXVIII of 1926.

Power for certain High Courts to enrol advocates.

(*2*) Every advocate so enrolled shall be entitled to appear for the suitors of the Court, and to plead or to act, or to plead and act, for those suitors, according as the Court may by its rules determine, and subject to those rules.

(*3*) The High Court may dismiss any advocate so enrolled or suspend him from practice:

(*4*) Provided that an advocate shall not be dismissed or suspended under this section unless he has been allowed an opportunity of defending himself before the High Court which enrolled him, and [6][except in the case of the Chief Court of Oudh] unless the order of the High Court dismissing or suspending him has been confirmed by the [5][State Government].]

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[1] Ins. by the Legal Practitioners (Amendment) Act, 1908 (1 of 1908), s. 5.

[2] Subs. by the Legal Practitioners Act, 1884 (9 of 1884), s. 7, for "by the Chief Court of the Punjab".

[3] Ins. by the Indian Bar Councils Act, 1926 (38 of 1926), s. 19 and Sch.

[4] Subs. by the Legal Practitioners Act, 1884 (9 of 1884), s. 8, for the original section.

[5] *See* footnote 2 on p. 553, *supra*.

[6] Ins. by the Oudh Courts (Supplementary) Act, 1925 (32 of 1925), s. 2 and Sch.

42. [*Repeal of Chapter VI of Bom. Reg. II of 1827 and Acts I of 1846 and XX of 1853.*] *Rep. by the Repealing Act, 1938 (I of 1938), s. 2 and Sch.*

FIRST SCHEDULE.—[*Enactments repealed.*] *Rep by the Repealing Act, 1938 (I of 1938), s. 2 and Sch.*

SECOND SCHEDULE.

VALUE OF STAMPS FOR CERTIFICATES.

(*See section 25.*)

I

For a certificate authorizing the holder to practise as a pleader—

(*a*) in the High Court and any subordinate Court—rupees fifty:

(*b*) in any Court of Small Causes in a Presidency-town—rupees twenty-five:

(*c*) in all other subordinate Courts—rupees twenty-five:

(*d*) in the Courts of Subordinate Judges, Munsifs, Assistant Commissioners, Extra Assistant Commissioners and Tahsildars, in Courts of Small Causes outside the Presidency-towns and in all Criminal Courts subordinate to the High Court—rupees fifteen:

(*e*) in the Courts of Munsifs and any Civil or Criminal Court of first instance not hereinbefore specifically mentioned—rupees five.

II.

For a certificate authorizing the holder to practise as a mukhtar—

(*f*) in the High Court and any subordinate Court—rupees twenty-five:

(*g*) in any Court of Small Causes in a Presidency-town—rupees fifteen:

(*h*) in all other subordinate Courts—rupees fifteen:

(*i*) in the Courts of Subordinate Judges, Munsifs, Assistant Commissioners, Extra Assistant Commissioners and Tahsildars, in Courts of Small Causes outside the Presidency-towns and in all Criminal Courts subordinate to the High Court—rupees ten:

(*j*) in the Courts of Munsifs and any Civil or Criminal Court of first instance not hereinbefore specifically mentioned—rupees five.

III

For a certificate authorising the holder to practise as a revenue-agent—

(*k*) in the office of the Chief Controlling Revenue-authority and in any revenue-office subordinate to such Authority—rupees fifteen:

(*l*) in the office of a Commissioner and in any revenue-office subordinate to a Commissioner—rupees ten:

(*m*) in the office of a Collector and in any revenue-office subordinate to a Collector—rupees five.

THE RAIPUR AND KHATTRA LAWS ACT, 1879.

ACT No. XIX of 1879.[1]

[*29th October, 1879.*]

An Act to amend the law in force in *thanas* Raipur and Khattra.

Preamble.

Whereas the territory comprised in the *thana* of Raipur (including the independent police-outpost of Simlapal) and the *thana* of Khattra has been transferred from the district of Manbhum to the district of Bankura;

And whereas the said territory, when included in the district of Manbhum, formed portion of the Chota Nagpur Division, which is a scheduled district under Act No. XIV of 1874 (the Scheduled Districts Act, 1874);

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[1] For Proceedings in Council, *see* Supplement to Gazette of India, 1879, p. 1376.

And whereas it is expedient that the law in force in the said territory should be the same as the law in force in the district of Bankura; It is hereby enacted as follows:—

Short title. Commencement.

1. This Act may be called the Raipur and Khattra Laws Act, 1879: and it shall come into force at once.

Laws of Bankura to apply. Other laws repealed.

2. All enactments which on the first day of October, 1879, were in force in the district of Bankura and not in the said territory shall be deemed to have come into force in the said territory on that day; and all enactments which on that day were in force in the said territory and not in the district of Bankura shall be deemed to have been repealed on and from that day in the said territory.

3. [*Pending proceedings.*] *Rep. by the Amending Act, 1891 (XII of 1891).*

Territory to cease to be a scheduled district.

4. The said territory shall be deemed to have ceased to be a scheduled district on the said first day of October, 1879.

THE RELIGIOUS SOCIETIES ACT, 1880.

ACT No. I of 1880.[1]

[*9th January 1880.*]

An Act to confer certain powers on Religious Societies.

Preamble.

WHEREAS it is expedient to simplify the manner in which certain bodies of persons associated for the purpose of maintaining religious worship may hold property acquired for such purpose, and to provide for the dissolution of such bodies and the adjustment of their affairs and for the decision of certain questions relating to such bodies; It is hereby enacted as follows:—

Short title.

1. This Act may be called the Religious Societies Act, 1880.

Local extent.

It [2]* * * * shall extend to [3][the whole of India except ~~Part B States~~].

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[1] For Statement of Objects and Reasons, *see* Gazette of India, 1879, Pt. V, p. 770; for Proceedings in Council, *see ibid.*, 1879, Supplement, pp. 598, 745 and 174; *ibid.*, 1880, Supplement, pp. 23 and 170.

[2] The words "shall come into force at once, and" rep. by the Repealing and Amending Act, 1914 (10 of 1914).

[3] Subs. by the A. O. 1950 for "all the Provinces of India" which had been subs. by the A. O. 1948 for "the whole of British India".

but nothing herein contained shall apply to any Hindus, Muhammadans or Buddhists, or to any persons whom the [1][State Government] may from time to time, by notification in the [2][Official Gazette], exclude from the operation of this Act.

Appointment of new trustee in cases not otherwise provided for.

2. When any body of persons associated for the purpose of maintaining religious worship has acquired, or hereafter shall acquire, any property,

and such property has been or hereafter shall be vested in trustees in trust for such body,

and it becomes necessary to appoint a new trustee in the place of or in addition to any such trustee or any trustee appointed in the manner hereinafter prescribed,

and no manner of appointing such new trustee is prescribed by any instrument by which such property was so vested or by which the trusts on which it is held have been declared, or such new trustee cannot for any reason be appointed in the manner so prescribed,

such new trustee may be appointed in such manner as may be agreed upon by such body, or by a majority of not less than two-thirds of the members of such body actually present at the meeting at which the appointment is made.

Appointment under section 2 to be recorded in a memorandum under the hand of the chairman of the meeting.

3. Every appointment of new trustees under section 2 shall be made to appear by some memorandum under the hand of the chairman for the time being of the meeting at which such appointment is made.

Such memorandum shall be in the form set forth in the schedule hereto annexed, or as near thereto as circumstances allow, shall be executed and attested by two or more credible witnesses in the presence of such meeting, and shall be deemed to be a document of which the registration is required by the Indian Registration Act, 1877[3], section 17.

III of 1877.

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[1] Subs. by the A. O. 1950 for "Provincial Government". These words were subs. by the A. O. 1937 for "L. G." which had been subs. for "G. G. in C." by the Devolution Act, 1920 (38 of 1920), s. 2 and Sch. I.

[2] Subs. by the A. O. 1937 for "local official Gazette" which had been subs. for "Gazette of India" by Act 38 of 1920, s. 2 and Sch. I.

[3] *See* now the Indian Registration Act, 1908 (16 of 1908).

Property to vest in new trustees without conveyance.

4. When any new trustees have been appointed, whether in the manner prescribed by any such instrument as aforesaid or in the manner hereinbefore provided, the property subject to the trust shall forthwith, notwithstanding anything contained in any such instrument, become vested, without any conveyance or other assurance, in such new trustees and the old continuing trustees jointly, or, if there are no old continuing trustees, in such new trustees wholly, upon the same trusts, and with and subject to the same powers and provisions, as it was vested in the old trustees.

Saving of existing modes of apointment and conveyance.

5. Nothing herein contained shall be deemed to invalidate any appointment of new trustees, or any conveyance of any property, which may hereafter be made as heretofore was by law required.

Provision for dissolution of societies and adjustment of their affairs.

6. Any number not less than three-fifths of the members of any such body as aforesaid may at a meeting convened for the purpose determine that such body shall be dissolved; and thereupon it shall be dissolved forthwith, or at the time then agreed upon; and all necessary steps shall be taken for the disposal and settlement of the property of such body, its claims and liabilities, according to the rules of such body applicable thereto, if any, and, if not, then as such body at such meeting may determine:

Provided that, in the event of any dispute arising among the members of such body, the adjustment of its affairs shall be referred to the principal Court of original civil jurisdiction of the district in which the chief building of such body is situate; and the Court shall make such order in the matter as it deems fit.

Upon a dissolution no member to receive profit.

7. If upon the dissolution of any such body there remains, after the satisfaction of all its debts and liabilities, any property whatsoever, the same shall not be paid to or distributed among the members of such body or any of them, but shall be given to some other body of persons associated for the purpose of maintaining religious worship or some other religious or charitable purpose to be determined by the votes of not less than three-fifths of the members present at a meeting convened in this behalf, or in default thereof by such Court as last aforesaid.

Saving of certain provisions of instruments.

8. Nothing in sections 6 and 7 shall be deemed to affect any provision contained in any instrument for the dissolution of such body, or for the payment or distribution of such property.

Questions may be submitted to High Court.

9. When any question arises, either in connection with the matters hereinbefore referred to, or otherwise, as to whether any person is a member of any such body as aforesaid, or as to the validity of any appointment under this Act, any person interested in such question may apply by petition to the High Court for its opinion on such question. A copy of such petition shall

be served upon, and the hearing thereof may be attended by, such other persons interested in the question as the Court thinks fit.

Any opinion given by the Court on an application under this section shall be deemed to have the force of a declaratory decree.[1]

The costs of every application under this section shall be in the discretion of the Court.

THE SCHEDULE.

(*See section 3.*)

Memorandum of the appointment of the new trustees of the (*describe the church, chapel, or other building and property*) situate at a meeting duly convened and held for that purpose (*in the vestry of the said*) on the day of 18 , *A. B.* of Chairman.

Names and descriptions of all the trustees on the constitution or last appointment of trustees, made the day of

(*here insert the same.*)

Names and descriptions of all the trustees in whom the said (*chapel and property*) now become legally vested,

First.—Old continuing trustees:—

(*here insert the same.*)

Second.—New trustees now chosen and appointed:—

(*here insert the same.*)

Dated this day of 18

Signed by the said *A. B.* as chairman of the said Meeting, at and in the presence of the said Meeting on the day and year aforesaid in the presence of— } *A. B.*, *Chairman of the said Meeting.*

C. D.

E. F.

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[1] As to effect of a declaratory decree, see the Specific Relief Act, 1877 (1 of 1877), s. 43.

THE KAZIS ACT, 1880.

ACT No. XII of 1880.[1]

[*9th July 1880*]

An Act for the appointment of persons to the Office of Kazi.

WHEREAS by the preamble to Act No. XI of 1864[2] (*An Act to repeal the law relating to the offices of Hindu and Muhammadan Law officers and to the offices of Kazi-ul-Kuzaat and of Kazi, and to abolish the former offices*) it was (among other things) declared that it was inexpedient that the appointment of the Kazi-ul-Kuzaat, or of City, Town or Pargana Kazis, should be made by the Government, and by the same Act the enactments relating to the appointment by the Government of the said officers were repealed; and whereas by the usage of the Muhammadan community in some parts of [3][India] the presence of Kazis appointed by the Government is required at the celebration of marriages and the performance of certain other rites and ceremonies, and it is therefore expedient that the Government should again be empowered to appoint persons to the office of Kazi; It is hereby enacted as follows:—

Short title.

1. This Act may be called the Kazis Act, 1880;

[4]* * * *

Local extent.

It extends, in the first instance, only to the territories administered by the Governor of Fort Saint George in Council. [5][~~the Government of any other Part A State or the Government of a Part C State~~] may from time to time, by notification in the Official Gazette, extend it to the whole or any part of the territories under its administration.[6]

Power to appoint Kazis for any local area.

2. Wherever it appears to the [7][State Government] that any considerable number of the Muhammadans resident in any local area desire that one or more Kazis should be appointed for such local area, the [7][State Government] may, if it thinks fit, after consulting the principal Muhammadan residents of such local area, select one or more fit persons and appoint him or them to be Kazis for such local area.

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[1] For Statement of Objects and Reasons, *see* Gazette of India, 1880, Pt. V, p. 21; for the Report of the Select Committee, *see ibid.*, Pt. V, p. 203; for discussions in Council, *see ibid.*, Supplement, pp. 345, 356, and 1203.

[2] Rep. by the Repealing Act, 1868 (8 of 1868).

[3] Subs. by the A. O. 1950 for "the Provinces" which had been subs. by the A. O. 1948 for "British India".

[4] The words "and it shall come into force at once" rep. by the Repealing and Amending Act, 1914 (10 of 1914).

[5] The original words "any other Local Government" have been successively amended by the A. O. 1937 and the A. O. 1950 to read as above.

[6] The Act has been extended to certain places in the Bombay Presidency, Bengal, the U. P., the Punjab, the C. P. and Assam.

[7] Subs. by the A. O. 1950 for "Provincial Govt." which had been subs. by the A. O. 1937, for "L. G".

If any question arises whether any person has been rightly appointed Kazi under this section, the decision thereof by the [1][State Government] shall be conclusive.

The [1][State Government] may, if it thinks fit, suspend or remove any Kazi appointed under this section who is guilty of any misconduct in the execution of his office, or who is for a continuous period of six months absent from the local area for which he is appointed, or leaves such local area for the purpose of residing elsewhere, or is declared an insolvent, or desires to be discharged from the office, or who refuses or becomes in the opinion of the [1][State Government] unfit, or personally incapable, to discharge the duties of the office.

Naib Kazis.

3. Any Kazi appointed under this Act may appoint one or more persons as his naib or naibs to act in his place in all or any of the matters appertaining to his office throughout the whole or in any portion of the local area for which he is appointed, and may suspend or remove any naib so appointed.

When any Kazi is suspended or removed under section 2, his naib or naibs (if any) shall be deemed to be suspended or removed, as the case may be.

Nothing in Act to confer judicial or administrative powers; or to render the presence of Kazi necessary; or to prevent any one acting as Kazi.

4. Nothing herein contained, and no appointment made hereunder, shall be deemed—

(*a*) to confer any judicial or administrative powers on any Kazi or Naib Kazi appointed hereunder; or

(*b*) to render the presence of a Kazi or Naib Kazi necessary at the celebration of any marriage or the performance of any rite or ceremony; or

(*c*) to prevent any person discharging any of the functions of a Kazi.

THE VACCINATION ACT, 1880.

CONTENTS.

PREAMBLE.

SECTIONS.

1. Short title.
   Application.
2. Interpretation-clause.
3. Extension of Act to municipalities.

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[1] *See* footnote 7 on p. 584, *supra.*

SECTIONS.

4. Extension to cantonments.

5. Power to withdraw local area from operation of Act.

6. Prohibition of inoculation.

Inoculated persons not to enter without certificate local area subject to Act.

7. Vaccination-circles.

Vaccinators;

Superintendent of vaccination.

8. Private vaccinators.

9. Unprotected children to be vaccinated.

Vaccinator to vaccinate children, or deliver certificates of postponement.

10. Inspection after vaccination.

11. Procedure when vaccination is successful.

12. Procedure when vaccination is unsuccessful.

13. Procedure when child is unfit for vaccination.

Renewal of postponement certificates.

14. Certificates of insusceptibility of successful vaccination.

15. What lymph to be used.

16. No fee to be charged except by private vaccinator.

Proviso.

17. Duties of Superintendent of vaccination.

Notice to parent or guardian neglecting to comply with Act.

18. Order by Magistrate when notice not complied with.

Procedure when order not obeyed.

Magistrates to be non-officials.

19. Power to make rules for municipalities.

20. Power to make rules for cantonments.

21. What rules under sections 19 and 20 may provide for.

22. Punishment of offences.

23. Municipal funds to receive fees and meet expenditure.

ACT No. XIII of 1880.[1]

[*9th July 1880*]

An Act to give power to prohibit inoculation and to make the vaccination of children compulsory in certain Municipalities and Cantonments.[2]

WHEREAS it is expedient to give power to prohibit inoculation, and make the vaccination of children compulsory in certain municipalities and cantonments[2]; It is hereby enacted as follows:— Preamble.

1. This Act may be called the Vaccination Act, 1880: and it shall apply only to such municipalities and cantonments[3] situate in [4][Uttar Pradesh, Punjab, the Central Provinces, Assam, Delhi, Ajmer] and Coorg as it may be extended to in manner hereinafter provided. Short Title Application.

2. In this Act unless there is something repugnant in the subject or context,— Interpretation-clause.

(*1*) the expression "Municipal Commissioners" means a body of Municipal Commissioners or a Municipal Committee constituted under the provisions of any enactment for the time being in force: "Municipal Commissioners."

(*2*) "parent" means the father of a legitimate child and the mother of an illegitimate child: "parent."

(*3*) "guardian" includes any person who has accepted or assumed the care or custody of any child: "guardian."

(*4*) "unprotected child" means a child who has not been protected from small-pox by having had that disease either naturally or by inoculation, or by having been successfully vaccinated, and who has not been certified under this Act to be insusceptible to vaccination: "unprotected child."

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[1] For Statement of Objects and Reasons, see Gazette of India, 1880, Pt. V, p. 80; for Report of Select Committee, see *ibid.*, p. 205 and for Proceedings in Council, see *ibid.*, 1879, Supplement, p. 1225, and *ibid.*, 1880, Supplement, pp. 566, 1204.

This Act has been declared to be in force in Panth Piploda by the Panth Piploda Laws Regulation, 1929 (1 of 1929), s. 2; and has been amended in its application to—

Ajmer by Act 6 of 1945;
C. P. by C. P. Acts 3 of 1915, 6 of 1932 and 4 of 1933;
C. P. and Berar by C. P. & Berar Act 44 of 1947;
Coorg by Coorg Act 6 of 1940;
Punjab by Punjab Acts 9 of 1925 and 2 of 1929; and
U. P. by U. P. Act 2 of 1907.

[2] The long title and preamble have been amended in U. P., Punjab and C. P. so as to include other local areas.

[3] This provision has been amended in U. P., Punjab and C. P. so as to include other local areas.

[4] The original words have been successively amended by the A. O. 1937, A. O. 1948 and A. O. 1950 to read as above.

"inoculation"

(5) "inoculation" means any operation performed with the object of producing the disease of small-pox in any person by means of variolous matter:

"vaccination-circle."

(6) "vaccination-circle" means one of the parts into which a municipality or cantonment has been divided under this Act for the performance of vaccination:

"vaccinator."

(7) "vaccinator" means any vaccinator appointed under this Act to perform the operation of vaccination, or any private person authorized [1]* * * in manner hereinafter provided to perform the same operation; and includes a "Superintendent of vaccination":

"vaccination-season."

(8) "vaccination-season" means the period from time to time fixed by the [2][State Government] for any local area under its administration by notification in the Official Gazette, during which alone vaccination may be performed under this Act.

Extension of Act to municipalities.

3. A majority in number of the persons present at a meeting of the Municipal Commissioners specially convened in this behalf may apply to the [2][State Government] to extend this Act to the whole or any part of a municipality, and thereupon the [2][State Government] may, if it thinks fit, by notification published in the Official Gazette, declare its intention to extend this Act in the manner proposed.

Any inhabitant of such municipality or part thereof who objects to such extension may within six weeks from the date of such publication, send his objection in writing to the Secretary to the [2][State Government], and the [2][State Government] shall take such objection into consideration. When six weeks from the said publication have expired, the [2][State Government], if no such objections have been sent as aforesaid, or (when such objections have been so sent) if in its opinion they are insufficient, may by like notification effect the proposed extension.[3]

Extension to cantonments.

4. The [2][State Government] may, [4]* * * * * by notification in the [5][Official Gazette], extend this Act to the whole or any part of a military cantonment.

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[1] The words "by the L. G." rep. by the Decentralization Act, 1914 (4 of 1914), s. 2 and Sch., Pt. I.

[2] *See* footnote 7 on p. 584, *supra*.

[3] In the U. P. and the Punjab, a new s. 3A has been inserted by U. P. Act 2 of 1907 and Punjab Act 2 of 1929, respectively, providing for extension of the Act to other local areas. In the C. P. ss. 3A, 3B, 3C and 3D have been inserted for a similar purpose by C. P. Acts 3 of 1915, 6 of 1932 and 4 of 1933, respectively.

[4] The words "subject to the control of the G. G. in C." rep. by the Devolution Act, 1920 (38 of 1920).

[5] Subs. by the A. O. 1937 for "local official Gazette".

5. The [1][State Government] may, by notification in the Official Gazette, withdraw any local area in a municipality[2] or [3]* * * * any local area in a cantonment, from the operation of this Act.

Power to withdraw local area from operation of Act.

6. In any local area to which the provisions of this Act apply, inoculation shall be prohibited; and

Prohibition of inoculation.

no person who has undergone inoculation shall enter such area before the lapse of forty days from the date of the operation, without a certificate from a medical practitioner, of such class as the [1][State Government] may from time to time by written order authorize to grant such certificates, stating that such person is no longer likely to produce small-pox by contact or near approach.

Inoculated persons not to enter, without certificate, local area subject to Act.

7. Every local area to which this Act applies shall be a vaccination-circle, or shall in manner hereinafter provided be divided into a number of such circles;

Vaccination circles.

one or more vaccinators shall be appointed in manner hereinafter provided for each such circle; and

Vaccinators.

one or more Superintendents of vaccination shall be appointed in manner hereinafter provided for each such local area.

Superintendent of vaccination.

8. The [4][Commissioner] may by written licence authorize private vaccinators to perform vaccination in any vaccination-circle, and may suspend or cancel any such licence.

Private vaccinators.

9. When any unprotected child, having attained the age of 6 months, has resided for a period of one month during the vaccination-season in any local area to which the provisions of this Act apply, and has not at the expiration of such period attained the age, if a boy, of fourteen years, and if a girl, of eight years, the parent or guardian of such child shall take it, or cause it to be taken, to a vaccinator to be vaccinated, or send for a vaccinator to vaccinate it.

Unprotected children to be vaccinated.

Such vaccinator shall vaccinate the child and deliver to its parent or guardian a memorandum stating the date on which the vaccination has been performed and the date on which the child is to be inspected in order to ascertain the result of the operation, or shall, if he finds such child in a state unfit for vaccination, deliver to its parent or guardian a certificate under his hand to the effect that the child is in a state unfit for vaccination for the whole or part of the current vaccination-season.

Vaccinator to vaccinate children, or deliver certificates of postponement.

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[1] *See* footnote 7 on p. 584, *supra*.

[2] This provision has been amended in the U. P., the Punjab and the C. P. so as to include other local areas.

[3] The words "subject to the control of the G. G. in C." rep. by the Devolution Act, 1920 (38 of 1920).

[4] Subs. by the Decentralization Act, 1914 (4 of 1914), s. 2 and Sch., Pt. I, for "L. G.".

Inspection after vaccination.

10. The parent or guardian of every child which has been vaccinated under section nine shall, on the date of inspection stated in the memorandum, take the child, or cause it to be taken, to a vaccinator for inspection, or get it inspected at his own house by a vaccinator; and

such vaccinator shall then append to the memorandum a certificate stating that the child has been inspected and the result of such inspection.

Procedure when vaccination is successful.

11. When it is ascertained at the time of inspecting a child under section ten that the vaccination has been successful, a certificate shall be delivered by the vaccinator to the parent or guardian of such child to that effect, and such child shall thereafter be deemed to be protected.

Procedure when vaccination is unsuccessful.

12. When it is ascertained as aforesaid that the vaccination has been unsuccessful, the parent or guardian shall, if the vaccinator so direct, cause the child to be forthwith again vaccinated and subsequently inspected in manner hereinbefore provided.

Procedure when child is unfit for vaccination.

13. A certificate granted under section nine showing the unfitness of a child for vaccination shall remain in force for the period stated therein, and on the termination of that period, or, if that period terminates after the vaccination-season is over, when the next vaccination-season begins, the parent or guardian of such child shall take the child, or cause it to be taken, to a vaccinator to be vaccinated, or procure its vaccination at his own house by a vaccinator:

Renewal of postponement certificates.

Provided that, if the child is still found to be in a state unfit for vaccination, the certificate granted under section nine shall be renewed.

Certificates of insusceptibility of successful vaccination.

14. If the Superintendent of vaccination is of opinion that a child which has been three times unsuccessfully vaccinated is insusceptible of successful vaccination, he shall deliver to the parent or guardian of such child a certificate under his hand to that effect; and the parent or guardian shall thenceforth not be required to cause the child to be vaccinated.

What lymph to be used.

15. The vaccination of a child shall ordinarily be performed with such lymph as may be prescribed by the rules to be made under this Act:

Provided that,

1st, if animal-lymph is so prescribed and the parent or guardian of any child desires that such child shall be vaccinated with human lymph, it shall be so vaccinated; and

2nd, if in any local area in which animal-lymph is procurable human lymph is so prescribed, and the parent or guardian of any child desires that such child should be vaccinated with animal-lymph, and tenders to the vaccinator the amount of such fee, not exceeding one rupee, as may be fixed by such rules in this behalf, such child shall be so vaccinated.

16. No fee shall be charged by any vaccinator except a private vaccinator to the parent or guardian of any child for any of the duties imposed on such vaccinator by or under the provisions of this Act:

No fee to be charged except by private vaccinator.

Provided that it shall be lawful for a vaccinator to accept a fee for vaccinating a child by request of the parent or guardian elsewhere than in the circle for which such vaccinator is appointed.

Proviso.

[1]**17.** The Superintendent of vaccination, in addition to the other duties imposed on him by or under the provisions of this Act, shall ascertain whether all unprotected children, under the age of fourteen years if boys, and under the age of eight years if girls, within the local area under his superintendence have been vaccinated; and, if he has reason to believe that the parent or guardian of any such child is bound by the provisions hereinbefore contained to procure the vaccination of such child or to present it for inspection, and has omitted so to do, he shall personally go to the house of such parent or guardian, and there make enquiry, and shall, if the fact is proved, forthwith deliver to such parent or guardian, or cause to be affixed to his house, a notice requiring that the child be vaccinated, or (as the case may be) that it be presented for inspection, at a time and place to be specified in such notice.

Duties of Superintendent of vaccination.

Notice to parent or guardian neglecting to comply with Act.

18. If such notice is not complied with, the Superintendent of vaccination shall report the matter to the [2]Magistrate of the District, or such Magistrate as the [3][State Government] or the [1]Magistrate of the District may from time to time appoint in this behalf; and the Magistrate receiving such report shall summon the parent or guardian of the child and demand his explanation, and shall, if such explanation is not satisfactory, make an order in writing directing such parent or guardian to comply with the notice before a date specified in the order.

Order by Magistrate when notice not complied with.

If on such date the order has not been obeyed, the Magistrate shall summon the parent or guardian before him, and unless just cause or excuse is shown, shall deal with the disobedience as an offence punishable under section twenty-two.

Procedure when order not obeyed.

The Magistrates appointed under this section shall, as far as is conveniently practicable, [4][not be paid servants of Government].

Magistrates to be non-officials.

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[1] S. 17 has been amended in C. P. and Berar by C. P. & Berar Act 44 of 1947.

[2] *Read* District Magistrate, *see* the Code of Criminal Procedure, 1898 (Act 5 of 1898), s. 3 (2).

[3] *See* footnote 7 on p. 584, *supra*.

[4] Subs. by the A. O. 1950 for "be Natives of India, and not paid servants of the Crown". The last word was subs. by the A. O. 1937 for "Govt.".

Power to make rules for municipalities.

19. When this Act has been applied to any municipality or any part thereof, the Municipal Commissioners may, from time to time, make rules consistent with this Act for the proper enforcement of this Act within the limits to which it applies. Such rules shall be made in the manner in which, under the law for the time being in force, the [1][Municipal] Commissioners make rules or bye-laws for the regulation of other matters within the limits of the municipality, and shall, when confirmed by the [2][Commissioner] and published in the Official Gazette, have the force of law:

Provided that the [2][Commissioner] may at any time rescind or modify any such rule.[3]

Power to make rules for cantonments.

20. When this Act has been applied to any cantonment or any part thereof, the [4][State Government] may, from time to time, [5]* * make such rules.

What rules under sections 19 and 20 may provide for.

21. The rules to be made for any local area under section nineteen or[6] twenty may, among other matters, provide for—

(*a*) the division of such local area into circles for the performance of vaccination;

(*b*) the appointment of a place in each vaccination-circle as a public vaccine-station, and the posting of some distinguishing mark in a conspicuous place near such station;

(*c*) the qualifications to be required of public vaccinators and Superintendents of vaccination;

(*d*) the authority with which their appointment, suspension and dismissal shall rest;

(*e*) the time of attendance of public vaccinators at the vaccine-stations, and their residence within the limits of the vaccination-circles;

(*f*) the distinguishing mark or badge to be worn by them;

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[1]Ins. by the Decentralization Act, 1914 (4 of 1914), s. 2 and Sch., Pt. I.

[2]Subs. for "L. G.", *ibid.*

[3]S. 19 has been replaced by another section in the Punjab by Punjab Act 9 of 1925. After this section a new section 19-A has been ins. in the Punjab and the U. P. and two new sections 19A and 19B in the C. P. by Punjab Act 2 of 1929, U. P. Act 2 of 1907 and C. P. Acts 3 of 1915 and 6 of 1932, respectively.

[4]*See* footnote 7 on p. 584, *supra.*

[5]The words "subject to the control of the G. G. in C." rep. by the Devolution Act, 1920 (38 of 1920).

[6]The word and letter "nineteen A" have been ins. at this place in the Punjab and the U. P. and the words and letters "nineteen A, nineteen B" have been ins. in the C. P., by Punjab Act 2 of 1922, U. P. Act 2 of 1907 and C. P. Acts 3 of 1915 and 6 of 1932, respectively.

(*g*) the amount of fee chargeable by private vaccinators, and their guidance generally in the performance of their duties;

(*h*) the facilities to be afforded to people for procuring the vaccination of their children at their own houses;

(*i*) the grant and form of certificates of successful vaccination, of unfitness for vaccination or of insusceptibility of vaccination;

(*j*) the nature of the lymph to be used and the supply of a sufficient quantity of such lymph;

(*k*) the fee to be paid for vaccination with animal-lymph under section fifteen;

(*l*) the fee to be paid to a public vaccinator for vaccinating a child beyond the vaccination-circle at the request of the parent or guardian of the said child;

(*m*) the preparation and keeping of registers showing—

the names of children born in such local area on or after the date of the application of this Act;

the names of unprotected children born in such local area previous to the application of this Act, and who are, at the time this Act is applied, under the age of fourteen years if boys, and of eight years if girls;

the names of unprotected boys and girls respectively under those ages brought within such local area at any time after the application of this Act and who have resided there for a month;

the result of each vaccination or its postponement, and the delivery of certificates, if any;

[1](*n*) the assistance to be given by the Municipal Commissioners and municipal servants in the preparation of these registers, and in other matters; and

(*o*) the preparation of vaccination-reports and returns.

22. Whoever commits any of the undermentioned offences (that is to say):— **Punishment of offences.**

(*a*) violates the provisions of section six,

(*b*) neglects without just excuse to obey an order made under section eighteen,

[1] This cl. has been amended in the Punjab and the C. P. by Punjab Act 2 of 1929 and C. P. Act 6 of 1932, respectively, so as to include members of District Boards|Councils and the servants of those local bodies.

(*c*) breaks any of the rules made under section nineteen[1] or twenty, or

(*d*) neglects without just cause to obey an order made under section eighteen after having been previously convicted of so neglecting to obey a similar order made in respect of the same child,

shall be punished as follows (that is to say):—

in the case of the offence mentioned in clause (*a*), with simple imprisonment for a term which may extend to three months, or with fine which may extend to two hundred rupees, or with both;

in the case of the offences mentioned in clauses (*b*) and (*c*), with fine which may extend to fifty rupees; and

in the case of the offence mentioned in clause (*d*), with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Municipal funds to receive fees and meet expenditure.

23. The amount of all fees [2]* * realized, and the amount of all expenditure incurred, under this Act in any municipality shall respectively be credited to and paid from the Municipal Fund.[3]

TAJ MAHAL'S PENSION ACT, 1881

ACT No. I OF 1881.[4]

[*1st January 1881.*]

An Act for the determination of claims to Taj Mahal's pension.

Whereas, by a treaty dated the 24th Shaban 1244, Hijri, corresponding with the first day of March, 1829, and made between His Majesty the King of Oudh and the Government of the Hon'ble the East India Company, it was (amongst other things) agreed that a certain pension therein specified should be paid by the English Government to one Nawab Taj Mahal therein named, and that if she should die leaving an heir or heirs the English Government might at its election continue as before such pension to her heirs, or make over to them the principal sum proportionate to such pension according to the rate thereinbefore mentioned;

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[1] *See* foot-note 6 to s. 21, *supra*.

[2] The words "and fines" rep. by the A. O. 1937.

[3] This section has been amended in the U. P., the Punjab and the C. P. by U. P. Act 2 of 1907, Punjab Acts 9 of 1925 and 2 of 1929, and C. P. Act 6 of 1932 so as to include other local areas and funds.

[4] For statement of Objects and Reasons, *see* Gazette of India, 1880, Pt. V, p. 323.

and whereas the said Taj Mahal is now dead and doubts exist as to who are her heirs, and it is therefore expedient to provide for the appointment of a person to represent her estate for the purpose of receiving such pension;

and whereas the Secretary of State for India in Council is desirous of making over to the persons entitled to receive the said pension the principal sum proportionate thereto as provided in the said treaty, and it is expedient to empower the said Secretary of State in Council to capitalize the said pension pending the appointment of a person as aforesaid; It is hereby enacted as follows:–

1. This Act may be called "Taj Mahal's Pension Act, 1881"; and it shall come into force at once. **Short title. Commencement.**

2. Any person considering himself entitled to the said pension, or any portion thereof, may apply in writing to the Court of the District Judge of Lucknow (hereinafter called the District Court) for a certificate authorizing him to receive the same. **Certificate to be obtained by application to the District Court.**

The application shall be in such form and shall contain such particulars as the [1][Central Government] may from time to time, by rules to be published in the [2][Official Gazette], direct. **Form of application.**

3. The District Court shall fix a day for hearing the application, and shall cause to be stuck up in the court-house, and otherwise published or made known at the expense of the applicant, in such manner as it thinks fit, a copy of the application, with a notice stating the time and place at which it will be heard, and calling upon all persons claiming to have a better right than the applicant to the grant of the certificate to come in and oppose the application. **Publication of application and notice to persons desiring to oppose it.**

4. On the day so fixed, or any subsequent day to which the Court may adjourn the hearing, the Court shall, if no person claiming to have a better right than the applicant to the grant of the certificate is present, hear the application; and if, after recording the evidence produced by the applicant in support of his claim, and making such further enquiry (if any) as it thinks necessary, the Court is of opinion that the applicant has established his claim, it shall make an order for granting him a certificate. **Procedure at hearing when no opposition.**

In the event of the applicant not having, in the opinion of the Court, established his claim, it shall make an order dismissing his application.

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[1] Subs. by the A. O. 1937 for "G. G. in C.".

[2] Subs. by the A. O. 1937 for "Gazette of India".

Procedure in case of opposition.

5. In any case in which any person claiming to have a better right than the applicant to the grant of the certificate is present, the Court shall, after hearing the application and recording the evidence produced by the applicant in support of his claim, hear such person and record the evidence produced by him in support of his claim, and shall then, after making such further enquiry (if any) as it thinks necessary, determine which of the parties (if either) has established his claim to the certificate, and shall make an order for granting the same accordingly.

In the event of neither party having, in the opinion of the Court, established his claim, the Court shall make an order dismissing both the application and the counter-claim.

Appeal to the High Court.

6. When any order dismissing an application under section four, or any order under section five, is made, an appeal by any party to the proceedings, who deems himself aggrieved by such order, shall lie to the High Court, which may make an order dismissing such appeal or granting a certificate, or otherwise reversing or varying the order of the District Court, as it thinks fit.

Period of limitation for appeal.

7. The period of limitation for an appeal under section six shall be sixty days from the date of the order appealed against.

In computing such period, and in all respects not herein specified, the limitation of such appeals shall be governed by the provisions of the Indian Limitation Act, 1877[1]. XV of 1877.

Form of certificate.

8. A certificate granted under this Act shall specify the payments which the person to whom it is granted is entitled to receive, and shall contain such other particulars as the [2][Central Government] may from time to time prescribe in this behalf.

Effect of certificate.

9. Every certificate granted under section four, or section six,

and every certificate granted under section five, when the period of limitation fixed by section seven has expired without an appeal having been preferred against the order granting such certificate,

shall, while it remains in force, be conclusive evidence against [3][the Central Government] of the right of the person to whom it has been granted to receive the payments specified therein, and shall, unless or until it is rescinded and the authority rescinding it has given to [3][the Central Government] notice of such rescission, empower such person to give to [3][the Central Government] a full discharge for any such payment.

No obligation to pay except on

10. [3][The Central Government] shall not be bound to pay the said pension or any portion thereof to any person claiming the same, except on the

[1] *See* now the Indian Limitation Act, 1908 (9 of 1908).
[2] Subs. by the A. O. 1937 for "G. G. in C."
[3] Subs. by the A. O. 1950 for "the said Secretary of State in Council".

production by such person of a certificate, granted in the manner herein provided, authorizing him to receive the same.

production of certificate.

11. Nothing herein contained shall be deemed to affect the right of any person to recover by suit from the holder of a certificate granted under this Act, the amount of any payment made to him in virtue of such certificate.

Right of third parties against holder of certificate saved.

12. The Court ordering any certificate to be granted under this Act may, if it thinks fit, direct that before such certificate is granted, such security (if any) as it thinks necessary shall be taken from the person to whom such certificate is to be granted, for his rendering an account of the payments to be received by him in virtue of such certificate to any person who may be entitled to recover from him in manner referred to in section eleven, the whole or any part of such payments.

Court may take security from grantee of certificate.

13. The District Court may, on the application of any person who has recovered by suit from the holder of a certificate granted under this Act, the amount of any payment made to him in virtue of such certificate, grant a certificate to such person in supersession, wholly or in part, as the case may be, of the former certificate.

Court may grant fresh certificate to person who has recovered by suit amount paid to holder of old certificate.

No appeal shall lie from any order under this section.

On the grant of a fresh certificate under this section the former certificate shall be deemed to be rescinded wholly or in part, as the case may be.

Effect of fresh certificate.

14. In all proceedings, under this Act the District Court and the High Court shall, as far as may be and except as herein otherwise provided, exercise the powers and follow the procedure conferred on, and prescribed for, a Court of first instance and a Court of appeal, respectively, by the Code of Civil Procedure[1]: Provided that nothing contained in Chapter XLV[1] of the said Code shall apply to any order made in any such proceeding.

Proceedings to be regulated by Code of Civil Procedure.

15. The provisions of section thirteen of the said Code shall apply to all cases under section five of this Act in which the question of heirship to the said Taj Mahal, having been directly and substantially in issue in a suit in a Court of competent jurisdiction between the claimants, or between parties under whom they or any of them claim, litigating under the same title, has been heard and finally determined by such Court.

Matters decided in civil suits to be treated as *res judicata*.

16. All payments heretofore made by or on behalf of the said Secretary of State in Council under the said treaty shall be deemed to have been made in accordance with law: Provided that nothing in this section shall affect

Indemnity as to payments already made.

[1] *See* now the Code of Civil Procedure, 1908 (5 of 1908), ss. 109 to 112.

the right of any person to recover by suit the amount of any such payment from the person to whom the same has been made.

Government empowered to capitalize the amount of the pension.

17. [1][The Central Government] may, pending the grant of a certificate as hereinbefore provided, invest in securities of the [2][Central Government] the principal sum proportionate to the pension of the said Taj Mahal according to the rate mentioned in the said treaty, and may invest the income from time to time resulting from such securities in like securities.

On capitalization all claim to pension barred.

And, thereupon, all further claim to such pension and income shall cease, and the persons obtaining a certificate in manner hereinbefore provided shall be entitled, in lieu of such pension and income, to the securities aforesaid, together with the uninvested income (if any) which from the date of making such investment has resulted from such securities.

Arrears of pension accruing before capitalization to be invested.

18. [1][The Central Government] shall, without unnecessary delay, invest, in securities of the [2][Central Government], all arrears of such pension due at the time of the passing of this Act, and all such arrears falling due thereafter, and before the investment of the principal sum aforesaid. When any such arrears have been so invested, all further claim in respect thereof shall cease, and the persons obtaining a certificate in manner hereinbefore provided shall, in lieu of such arrears, be entitled to the securities in which they have been invested and the income resulting therefrom.

THE MUNICIPAL TAXATION ACT, 1881

ACT No. XI OF 1881.[3]

[*25th February, 1881.*]

An Act to give power to prohibit the levy of municipal taxes in certain cases.

Preamble.

WHEREAS it is expedient to empower [4][Government] to prohibit, in certain cases, the levy of municipal taxes payable by persons in the military [5][naval] [6][or air-force] service or by the [7][State Government]; It is hereby enacted as follows:—

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[1] *See* footnote 3 on p. 596, *supra*.

[2] Subs. by the A. O. 1937 for "G. of I."

[3] For Statement of Objects and Reasons, *see* Gazette of India, 1880, Pt. V, p. 193; for Proceedings in Council, *see ibid*, Supplement, pp. 904 and 915; and *ibid*, 1881, Supplement, p. 250. This Act has been partially extended to Berar by the Berar Laws Act, 1941 (4 of 1941).

[4] Subs. by the A. O. 1948 for "the G. G. in C.".

[5] Ins. by the Amending Act, 1934 (35 of 1934), s. 2 and Sch.

[6] Ins. by the Repealing and Amending Act, 1927 (10 of 1927), s. 2 and Sch. I.

[7] Subs. by the A. O. 1950 for "Provincial Govt." which had been subs. by the A. O. 1948 for "Secretary of State for India in Council".

1. This Act may be called the Municipal Taxation Act, 1881. **Short title.**

It extends to [1][the whole of India except Part B States]; **Local extent.**

[2]* * * * *

2. In this Act "Municipal Committee"[3] includes a Municipal Corporation or a body of Municipal Commissioners constituted by or under the provisions of any enactment for the time being in force. **"Municipal Committee" defined.**

3. Notwithstanding anything contained in any enactment for the time being in force, the [4][Central Government] may, by an order in writing, prohibit[5] the levy by a Municipal Committee of any specified tax— **Power to prohibit levy of tax**

VIII of 1911. XXXIV of 1934. XIV of 1932.

(*a*) payable by any person subject to the [6][Army Act, the Indian Army Act, 1911, [7][the Naval Discipline Act [8]* * * the Indian Navy (Discipline) Act, 1934] [9][the Air Force Act or the Indian Air Force Act, 1932] who is compelled by the exigencies of military [7][naval] [10][or air-force] duty to reside within the limits of a municipality;

[11]* * * * *

The [4][Central Government] may, by a like order, rescind any such prohibition.

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[1] *See* footnote 3 on p. 596, *supra*.

[2] The words "and shall come into force at once" rep. by the Repealing and Amending Act, 1914 (10 of 1914).

[3] For the purposes of this Act, every Cantonment Board as defined in the Cantonments Act, 1924 (2 of 1924), is deemed to be a Municipal Committee, *see* s. 97 of that Act.

[4] Subs. by the A. O. 1937 for "G. G. in C.".

[5] For such orders, *see* Gen. R. and O., Vol. II, p. 278; and *ibid.*, supplementary Vol. VI, p. 53.

[6] Subs. by the Repealing and Amending Act, 1927 (10 of 1927), s. 2 and Sch. I for "Army Discipline and Regulation Act, 1879, or the Indian Articles of War".

[7] Ins. by the Amending Act, 1934 (35 of 1934), s. 2 and Sch.

[8] The words "or that Act as modified by rep. by the A. O. 1950".

[9] Subs. by the Indian Air Force Act, 1932 (14 of 1932), s. 130 and Sch. for "or the Air Force Act".

[10] Ins. by Act 10 of 1927, s. 2 and Sch. I.

[11] The words "or (*b*) payable by the Secretary of State for India in Council" rep. by the A. O. 1937.

Power of Provincial Government to prohibit levy of taxes on it.

[1][**3A.** Notwithstanding anything in any enactment for the time being in force, the [State] Government may by an order in writing prohibit the levy by a Municipal Committee of any specified tax payable by the [State] Government and may by a like order rescind any such prohibition.]

Central Government to pay taxes referred to in section 3.

4. So long as any order made under section 3, prohibiting the levy of a tax on any person mentioned in [2]* * * * * that section remains in force, the [3][Central Government] shall be liable to pay to the Municipal Committee mentioned in the order the amount which otherwise would have been payable to such Committee by such person:

Provided that the [4][Central Government] shall not be liable to pay any sum in respect of any horse which such person is bound, by the regulations of the service to which he belongs, to keep.

Payments to be made in lieu of taxes referred to in section 3A.

5. So long as any order made under [5][section 3A] prohibiting the levy of any tax payable by the [6][State Government], remains in force, the said [7][State Government] shall be liable to pay to the Municipal Committee, in lieu of such tax, such sums (if any) as an officer from time to time appointed in this behalf by the [8][State Government] may, having regard to all the circumstances of the case, from time to time determine to be fair and reasonable.

Decision of question arising under this Act.

6. If any question arises whether any duty is military [9][, naval] [10][or air-force] duty within the meaning of this Act, the decision of the [11][Central Government] thereon shall be conclusive.

If any question arises whether any person is compelled as aforesaid to reside within the limits of a municipality or is bound as aforesaid to keep any horse, the decision thereon of such authority as the [11][Central Government] may, from time to time, appoint in this behalf shall be conclusive.

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[1] Ins. by the A. O. 1937. The word [State] has been subs. by the A. O. 1950 for "Provincial".

[2] The words "clause (*a*) of" rep. by the A. O. 1937.

[3] Subs. by the A. O. 1937 for "Secretary of State for India in Council".

[4] Subs. by the A. O. 1937 for "said Secretary of State in Council".

[5] Subs. by the A. O. 1937 for "section 3".

[6] Subs. by the A. O. 1950 for "Provincial Government" which had been subs. by the A. O. 1937 for "Secretary of State for India in Council".

[7] Subs. by the A. O. 1950 for "Provincial Government" which had been subs. by the A. O. 1937 for "Secretary of State in Council".

[8] Subs. by the A. O. 1950 for "Provincial Government" which had been subs. by the A. O. 1937 for "L. G."

[9] Ins. by the Amending Act. 1934 (35 of 1934), s. 2 and Sch.

[10] Ins. by the Repealing and Amending Act. 1927 (10 of 1927), s. 2 and Sch. I.

[11] Subs. by the A. O. 1937 for "G. G. in C.".

THE FORT WILLIAM ACT, 1881

ACT No. XIII OF 1881.[1]

[*11th March, 1881.*]

An Act to provide for the better government of Fort William.

Whereas it is expedient to give power to make rules for the better government of Fort William in Bengal, and to provide for the establishment of a Court within the said Fort for the trial of persons charged with breaches of such rules; It is hereby enacted as follows:— Preamle.

1. This Act may be called the Fort William Act, 1881; Short title.

And it shall come into force on the first day of April, 1881. Commencement.

But nothing herein contained shall be deemed to confer jurisdiction over any persons (other than artificers, labourers, sutlers and followers) to whom the [2][Army Act] or the Indian Articles of War, 1869,[3] is or are applicable. 44 & 45 Vict., c. 58, 5 of 1869.

2. The [4][Central Government] may, from time to time, by notification in the [5][Official Gazette], define, for the purposes of this Act, the limits of Fort William in Bengal; and in this Act the expression "the Fort" means the area so defined. "The Fort."

3. The Commander-in-Chief in India may, from time to time, with the sanction of the [4][Central Government], make rules, to be in force within the Fort, in regard to the matters specified in the Schedule hereto annexed and other matters of a like nature, and may by such rules prescribe, as penalties for the infringement thereof, fine which may extend to fifty rupees, or imprisonment for a term which may extend to four days, or both. Commander-in-Chief may make rules.

When a sentence of fine is passed under any such rule, the term for which the Court directs the offender to be imprisoned in default of payment of such fine may extend to, and shall not exceed, four days.

When any rule is made under this section, a copy thereof, in English and such other languages as the [4][Central Government] may from time to time direct, shall be exhibited in such conspicuous places within the Fort as the Officer Commanding the Fort may from time to time direct.

4. The [1][Central Government] may invest any commissioned officer in [2][the Indian] Army with power to try persons charged with any infringement of the rules made under section 3. Central Government may invest officer with power to try breaches of rules.

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[1] For Statement of Objects and Reasons, *see* Gazette of India, 1881, Pt. V, p. 48, and for Proceedings in Council, *see ibid*, 1881, Supplement, pp. 50, 96, 280 and 384.

[2] Subs. by the Repealing and Amending Act, 1903 (1 of 1903), s. 3 and Sch. II, for "Army Discipline and Regulation Act, 1879."

[3] *See* now the Indian Army Act, 1911 (8 of 1911).

[4] Subs. by the A. O. 1937 for "G. G. in C."

[5] Subs. by the A. O. 1937 for "Gazette of India".

The officer so invested is hereinafter called the Fort Magistrate.

Procedure to be followed.

5. In all cases under this Act, the Fort Magistrate shall, except as herein otherwise provided, exercise within the Fort the powers, and as nearly as may be, follow the procedure, conferred on, and prescribed for, a Presidency Magistrate by the [1][Code of Criminal Procedure, 1898]; and, subject to the power conferred by [2][section 526 of that Code], every finding, sentence or order of such Magistrate under this Act shall be final. V of 1898.

Power to arrest without warrant.

6. Any police-officer, or any other person empowered in this behalf by the [3][Central Government] by name or as a member of a specified class, may arrest without warrant any person who in his sight commits an offence punishable under this Act.

Power to police-officer to release on bail.

Every person so arrested shall be taken to the police-station within the Fort, and shall be detained there until he gives to the police-officer in charge of such station a bond, with or without sureties, as such officer may require, for a sum not exceeding one hundred rupees, to appear before the Fort Magistrate at a time to be specified in such bond, or until he can be brought before such Magistrate.

Jurisdiction of Presidency Magistrates and prosecutions under other laws saved.

7. Nothing in this Act, or in any rule made hereunder shall affect the jurisdiction of the [4][Presidency Magistrates] or shall prevent any person from being prosecuted under any other law for any offence punishable under this Act, or from being liable to any other punishment than is provided for such offence by this Act:

Provided that no person shall be punished twice for the same offence.

Limitation of time for prosecution under Act.

8. No prosecution for any offence under this Act shall be commenced after the expiration of three months next after such offence has been committed.

9. [*Validation of penalties heretofore imposed by Garrison Quarter Master.*] *Rep. by the Amending Act, 1891 (XII of 1891.)*

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[1] Subs. by the Repealing and Amending Act, 1903 (1 of 1903), s. 3 and Sch. II, for "Presidency Magistrates Act, 1877".

[2] Subs. "the High Courts Criminal Procedure Act, 1875, section 57", *ibid.*

[3] Subs. by the A. O. 1937 for "G. C. in C.".

[4] Subs. for "Magistrates appointed under the Presidency Magistrates Act, 1877" by Act 1 of 1903, s. 3 and Sch. II.

THE SCHEDULE.

(*See section 3.*)

(1) Throwing dirt or rubbish of any description into the drains or roads, or anywhere but in the appointed places.

(2) Removing night-soil without a covering or at unauthorised hours.

(3) Camp-followers, servants, and others not keeping the godowns they live in clean.

(4) Performing offices of nature in other than the appointed places.

(5) Bathing, or washing clothes or animals, in the *cunette* or other unauthorised places.

(6) Selling unwholesome articles of food, grain or drinks.

(7) Adulterating food or drinks.

(8) Making evacuations in unauthorised places.

(9) Rash or negligent driving.

(10) Picketing, training or breaking in animals.

(11) Causing obstruction by vehicles on the road.

(12) Exposing or hawking articles for sale about the roads and barracks or within the Fort without a Fort pass.

(13) Beating drums or tom-toms.

(14) Damaging lamps, posts, masonry or other Government property in any part of the Fort.

(15) Disorderly behaviour in the public thoroughfares.

(16) Gambling.

(17) Spitting *pan* on any of the public staircases, gateways, walls and verandahs, or defacing in any way the walls of barracks, building or gateways.

(18) Throwing slops into the drains.

(19) Washing cooking-pots at the water-taps and wasting water.

(20) Cooking in unauthorised places.

(21) Hanging clothes to dry on the guns or masonry-work.

(22) Laying out clothes, accoutrements or stable-bedding after the authorised hours.

(23) Destroying the trees, bushes or plants, or climbing trees.

(24) Servants smoking *hookas* in their masters' quarters or cook-houses, or keeping such quarters or cook-houses in an insanitary state.

(25) Trespassing on parade-grounds, or making foot-paths across the grass-plots.

(26) Being drunk and incapable.

(27) Fighting, quarrelling and creating a disturbance, or making unnecessary noise of any kind.

(28) Affixing bills and papers on any walls in the Fort.

(29) Cutting grass or interfering with the grass-contractor.

(30) Declining to show a tin pass when called upon to do so.

(31) Being found in the garrison without a tin pass, or being in possession of a ticket belonging to another.

(32) Driving vehicles without lights or with insufficiently-greased wheels.

(33) Swinging or sitting on the chain-fences.

(34) Interfering in any way with the guns, carriages, or piles of shot and shell on the works, or with the packed ordnance.

(35) Mounting the ramparts or parapets or entering the embrasures without authority.

(36) Smuggling liquor into the Fort.

(37) Burning stable-litter or lighting fires except in authorised places and at authorised hours.

(38) Carrying lights except in closed lanterns, or letting off fire-works.

(39) Removing property of any kind or description from the Fort without written authority.

(40) Allowing animals of any sort to stray into the Fort, or to graze within the same.

(41) Slaughtering animals or exposing carcasses or offal within the Fort.

(42) Keeping dogs or poultry in unauthorised places.

(43) Buying, selling or receiving any portion of a soldier's kit.

(44) Disobedience of lawful authority in failing to attend to authorised instructions of the police or of the several sentries posted throughout the Fort.

(45) Occupying buildings of any kind without proper allotment.

THE OBSTRUCTIONS IN FAIRWAYS ACT, 1881.

ACT No. XVI or 1881.[1]

[*15th March 1881.*]

An Act to empower the Government to remove or destroy obstructions in fairways, and to prevent the creation of such obstructions.

WHEREAS it is expedient to empower the Government to remove or destroy obstructions to navigation in fairways leading to ports in [2][~~a Part A State or a Part C State~~] and to prevent the creation of such obstructions: It is hereby enacted as follows:— **Preamble.**

1. This Act may be called the Obstructions in Fairways Act, 1881; **Short title.**

[3]* * * * *

But nothing herein contained shall apply to vessels [4][belonging to, or hired by a contract made on behalf of, the [5][Government].

2. Whenever, in any fairway leading to any port in [2][~~a Part A State or a Part C State~~] any vessel is sunk, stranded or abandoned, or any fishing-stake, timber or other thing is placed or left, [6][the Central Government] may, if in its opinion such thing is, or is likely to become, an obstruction or danger to navigation,— **Central Government empowered to remove or destroy obstruction in fairway.**

(*a*) cause such thing or any part thereof to be removed; or

(*b*) if such thing is of such a description or so situate that, [7][in the opinion of the Central Government], it is not worth removing, cause the same or any part thereof to be destroyed.

3. Whenever anything is removed under section 2, [8][the Central Government] shall be entitled to receive a reasonable sum, having regard to all the circumstances of the case, for the expenses incurred in respect of such removal. **Central Government entitled to expenses incurred in removing obstruction.**

Any dispute arising concerning the amount due under this section, in respect of anything so removed, shall be decided by the District Magistrate or Presidency Magistrate having jurisdiction at the place where such thing is, upon application to him for that purpose by either of the disputing parties; and such decision shall be final. **Dispute concerning such expenses.**

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[1] For the Statement of Objects and Reasons, *see* Gazette of India, 1881, Pt V, p. 3; for Proceedings in Council, *see ibid*, 1881, Supplement, pp. 19 and 405.

[2] Subs. by the A. O. 1950 for "the Provinces" which had been subs. by the A. O. 1948 for "British India".

[3] The words "and it shall come into force at once" rep. by the Repealing and Amending Act, 1914 (10 of 1914).

[4] Subs. by the A. O. 1937 for "belonging to Her Majesty or hired by Her Majesty or by the Secretary of State for India in Council".

[5] Subs. by the A. O. 1950 for "Crown".

[6] Subs. by the A. O. 1937 for "the L. G. of the part of British India in which such port is situate".

[7] Subs. by the A. O. 1937 for "in the opinion of the L. G.".

[8] Subs. by the A. O. 1937 for "the Govt.".

Notice of removal to be given by Central Government.

4. The [1][Central Government] shall, whenever anything is removed under section 2, publish in the [2][Official Gazette] a notification containing a description of such thing, and the time at which and the place from which the same was so removed.

Things removed may, in certain cases, be sold.

5. If, after publishing such notification, such thing is unclaimed, or

if the person claiming the same fails to pay the amount due for the said expenses and any customs-duties or other charges properly incurred by the [1][Central Government] in respect thereof,

the [1][Central Government] may sell such thing by public auction, if it is of a perishable nature, forthwith, and, if it is not of a perishable nature, at any time not less than six months after publishing such notification as aforesaid.

Proceeds how applied.

6. On realizing the proceeds of such sale, the amount due for expenses and charges as aforesaid, together with the expenses of the sale, shall be deducted therefrom, and the surplus (if any) shall be paid to the owner of the thing sold, or, if no such person appear and claim such surplus, shall be held in deposit for payment, without interest, to any person thereafter establishing his right to the same:

Provided that he makes the claim within one year from the date of the sale.

"Vessel" to include tackle, cargo, etc.

7. For the purposes of this Act, the term "vessel" shall be deemed to include also every article or thing or collection of things being or forming part of the tackle, equipment, cargo, stores or ballast of a vessel; and any proceeds arising from the sale of a vessel, and of the cargo thereof, or of any other property recovered therefrom, shall be regarded as a common fund.

Power to make rules to regulate and prohibit the placing of obstructions in fairways.

8. The [3][Central Government] may, from time to time, by notification in the [4][Official Gazette], make rules to regulate or prohibit, in any fairway leading to a port in [5][~~a Part A State or a Part C State~~] the placing of fishing-stakes, the casting or throwing of ballast, rubbish or any other thing likely to give rise to a bank or shoal, or the doing of any other act which will, in [6][its] opinion, cause, or be likely to cause, obstruction or danger to navigation.

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[1] Subs. by the A. O. 1937 for "L. G.".
[2] Subs. by the A. O. 1937 for "local official Gazette".
[3] Subs. by the A. O. 1937 for "G. G. in C.".
[4] Subs. by the A. O. 1937 for "Gazette of India".
[5] *See* footnote 2 on p. 605, *supra*.
[6] Subs. by the A. O. 1937 for "his".

9. Whoever is guilty of any act or omission in contravention of the rules made under section 8 may be tried for such offence in any district or presidency-town in which he is found, and shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

Penalty for breach of such rules.

10. Whenever the maintenance or creation of an obstruction in any fairway has become lawful by long usage or otherwise and such obstruction is removed or destroyed under section 2, or its creation is regulated or prohibited under section 8, any person having a right to maintain or create such obstruction shall be entitled to receive from the [1][Central Government] reasonable compensation for any damage caused to him by such removal, destruction, regulation or prohibition.

Compensation payable in certain cases for damage caused under this Act.

Every dispute arising concerning the right to such compensation, or the amount thereof, shall be determined according to the law for the time being in force relating to like disputes in the case of land needed for public purposes[2] and not otherwise; and for the purposes of such law the fairway from or in which such obstruction was removed or destroyed, or in which its creation was regulated or prohibited, shall be deemed to be a part of the presidency-town or district in which the port to which such fairway leads is situate.

11. Whenever any obstruction in a fairway leading to a port in ~~[a Part A State or a Part C State]~~ has been removed or destroyed, or whenever the creation of any such obstruction has been regulated or prohibited, by an order of the [4][Central Government] or a [5][State Government], previous to the passing of this Act, such removal, destruction, regulation or prohibition shall be deemed to have been effected under this Act.

Certain action of the Government previous to passing of this Act be deemed to have been taken hereunder.

12. Nothing herein contained shall be deemed to prevent the exercise by [6][the Central Government] of any other powers possessed by it in this behalf.

Saving of other powers possessed by Central Government.

[7][**13.** All references in this Act to the Central Government shall, in relation to fairways in inland waterways, be construed as references to the [8][~~the Government of a Part A State or a Part C State~~].

Application to fairways in inland waterways.

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[1] Subs. by the A. O. 1937 for "Secretary of State for India in Council".
[2] *See* the Land Acquisition Act, 1894 (1 of 1894).
[3] *See* footnote 2 on p. 605, *supra*.
[4] Subs. by the A. O. 1937 for "G. G.-in-C.".
[5] Subs. by the A. O. 1950, for "Provincial Government" which had been subs. by the A. O. 1937, for "L. G.".
[6] Subs. by the A. O. 1937 for "the Govt.".
[7] Ins. by the A. O. 1937.
[8] Subs. by the A. O. 1950 for "Provincial Government concerned".

THE BROACH AND KAIRA INCUMBERED ESTATES ACT, 1881.

CONTENTS.

PREAMBLE.

CHAPTER I.

PRELIMINARY.

SECTIONS.

1. Short title.
   Commencement.
2. [*Repealed.*]
3. Interpretation-clause.

CHAPTER II.

OF THE APPLICATION AND PRELIMINARY INQUIRY

4. Application for benefit of Act.
5. Order to inquire.
6. Verified statement to be submitted.
   False averments in statement.
7. Report of inquiry and proceedings thereon.

CHAPTER III.

OF THE ORDER OF MANAGEMENT.

8. "Order of management"; to what it extends.
   Commencement of management.
9. Effect of order of management.
   Stay of pending proceedings, etc.
   Bar of fresh proceedings.
   The debtor incompetent—
   to contract debts,
   to incumber or alienate property,
   to grant receipts for rent.
   Persons other than manager incompetent to incumber or alienate property.

SECTIONS.

10. Manager to have powers of owner and to receive rents and profits; to have powers of Collector for their recovery.

11. Manager to pay therefrom—
costs of management and repairs,
Government revenue, etc.,
rent due to superior holder,
allowance for maintenance and expenses of debtor and family,
cost of improvements, etc.
Residue how disposed of.

CHAPTER IV.

PROOF OF DEBTS AND SCHEME FOR LIQUIDATION.

12. Notice to claimants against debtor.
Copies of notice to be exhibited.

13. Claim to contain full particulars.
Documents to be given up.
Entries in books.
Power to exclude documents not produced with claim.

14. Claim not duly notified to be barred.
Admission of claims within further period of six months.

15. Determination of debts and liabilities.

16. Power to rank debts and to fix interest.

17. Scheme for liquidation.
Provisions of scheme.

18. Proceedings of Commissioner on submission of scheme.

19. Power to relinquish management.

CHAPTER V.

OF THE PROCEEDINGS SUBSEQUENT TO SANCTION OF THE LIQUIDATION-SCHEME.

20. Effects of sanctioning scheme.

21. Power to remove mortgagee in possession.

22. Power to inquire into consideration given for leases.

SECTIONS.

23. Power to lease.

24. Power to raise money by mortgage or sale.

25. Manager's receipt a discharge.

26. Termination of management.

Restoration of owner.

27. Death of debtor during management.

28. Mortgages, etc., made by restored Thakur valid only for his life.

CHAPTER VI.

OF APPEAL AND REVISION.

29. Appeal.

30. Power to call for proceedings and pass order thereon.

CHAPTER VII.

MISCELLANEOUS.

31. Power to make rules.

32. Power to appoint new manager.

33. Managers and their agents to be public servants.

34. Investigation a judicial proceeding.

35. Power to summon witnesses and compel production of documents.

36. Bar of suits.

37. Saving of jurisdiction of Courts in Broach and Kaira in respect of certain suits.

38. Exemption of certain Thakurs from certain provisions of Act.

ACT No. XXI of 1881.[1]

[*7th September, 1881.*]

An Act to amend the law providing for the relief of Thakurs in the Districts of Broach and Kaira.

WHEREAS it is expedient to amend to law providing for the relief of Thakurs in the, Districts of Broach and Kaira; It is hereby enacted as follows :— Preamble.

CHAPTER I.

PRELIMINARY.

1. This Act may be called the Broach and Kaira Incumbered Estates Act, 1881: Short title.

and it shall come into force on the passing thereof. Commencement.

2. [*Partial Repeal of Act XIV of 1877.*] *Rep. by the Repealing Act, 1938 (I of 1938), s. 2 and Sch.*

3. In this Act— Interpretation-clause.

"thakur" means also Talukdar, Jagirdar and kasbati, and such other classes of holders of estate as the [2][State Government] may [3]* * * * declare to be thakurs for the purposes of this Act:

"heir" means the person for the time being entitled as heir to a thakur:

"Commissioner" means the Revenue Commissioner of the Northern Division of the Presidency of Bombay.

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[1] For Statement of Objects and Reasons, *see* Gazette of India, 1881, Pt. V, p. 953, and for Proceedings in Council, *see ibid*, Supplement, pp. 435, 451, 1060 and 1092.

This Act is not in force in the Panch Mahals—*see* the Panch Mahals Laws Act, 1885 (7 of 1885), s. 2 (*1*).

[2] *See* footnote 5 on p. 607. *supra.*

[3] The words "with the previous sanction of the G. G. in C." rep. by the Devolution Act, 1920 (38 of 1920), s. 2 and Sch. I.

CHAPTER II.

Of the Application and Preliminary Inquiry.

Application for benefit of Act.

4. At any time within six months after the passing of this Act, any thakur, or any person who would be sole heir or one of the heirs to such thakur if he then died intestate, may apply, in writing, to the Commissioner stating that such thakur is subject to debts or liabilities, other than debts due, or liabilities incurred, to [1][the [2][Government]], or that his immovable property is charged with debts or liabilities other than as aforesaid, and requesting that the provisions of this Act be applied to his case.

When any thakur or other person entitled to make an application under this section is a minor, or of unsound mind, or an idiot, such application may be made on his behalf by the guardian or other legal curator of his person, or by the legally constituted administrator or manager of his estate.

Order to inquire.

5. When any such application is made by or on behalf of a thakur, or the person who would be his sole heir if he then died, the Commissioner shall direct an inquiry to be made by such officer as he thinks fit into the nature and amount of such debts and liabilities and the sufficiency of the debtor's property, whether movable or immovable, to discharge the same.

When such an application is made in any other case, it shall be in the discretion of the Commissioner, subject to any general rules which may from time to time be made by the [3][State Government] in this behalf, either to reject such application or to direct an inquiry to be made as aforesaid.

Verified statement to be submitted.

6. When an inquiry has been directed under section 5, the applicant shall, within a period to be fixed by the Commissioner, submit to the officer appointed to make such inquiry a statement duly verified by the said applicant, or by some other competent person, in the manner required by law for the verification of plaints, and containing, so far as may be practicable, such details as to the debts and liabilities, and as to the sufficiency of the debtor's property, whether movable or immovable, to meet the same as the Commissioner, or the said officer subject to his control, may require.

False avertments in statement.

If any such statement contains any averment which the person making the verification knows or believes to be false, or does not know or believe to

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[1] Subs. by the A. O. 1937 for "Govt.".

[2] Subs. by the A. O. 1950 for "Crown".

[3] Subs. by the A. O. 1950 for "Provincial Government" which had been subs. by the A. O. 1937 for "Governor of Bombay in Council".

be true, such person shall be deemed to have intentionally given false evidence within the meaning of the Indian Penal Code.

Report of inquiry and proceedings thereon.

7. The officer so appointed, after making inquiry, shall submit a report of his proceedings to the Commissioner.

On receipt of such report, the Commissioner may—

(*a*) direct a further inquiry, or

(*b*) dismiss the application, or

(*c*) by order published in the [1][Official Gazette], direct that the immovable property of the debtor shall be managed, and that his debts shall be liquidated, in the manner hereinafter provided, by a manager.

The Taluqdari Settlement-officer[2] for the time being shall, unless the [3][State Government] in any case otherwise directs, be such manager.

CHAPTER III.

OF THE ORDER OF MANAGEMENT.

"Order of management;" to what it extends.

8. Such order (hereinafter called "the order of management") shall extend to all immovable property of or to which the debtor is on the date of its publication possessed or entitled in his own right, or which he is entitled to redeem, or which may be acquired by or devolve on him during the continuance of the management, and to all debts and liabilities to which he is subject or which are charged on the whole or any part of his immovable property on the said date, and to the amount of any loan which may be received by the manager from Government in the manner hereinafter provided.

Commencement of management.

The management shall be deemed to commence from the date on which the order is published.

Effect of order of management.

9. On the publication of the order of management the following consequences shall ensue:

Stay of pending proceedings, etc.

first, all proceedings then pending in any Civil Court in [4][a Part A State or a Part C State] in respect to the debts and liabilities mentioned in section 8 shall be stayed; and the operation of all

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[1] Subs. by the A. O. 1937 for "Bombay Govt. Gazette".

[2] As to this officer, *see* the Broach and Kaira Incumbered Estates Act, 1877 (14 of 1877), s. 40.

[3] *See* footnote 5 on p. 607, *supra*.

[4] Subs. by the A. O. 1950 for "a Province of India" which had been subs. by the A. O. 1948 for "British India".

processes, executions and attachments then in force for or in respect of such debts and liabilities shall be suspended;

Bar of fresh proceedings.

secondly, so long as the management continues, no fresh proceedings, processes, executions or attachments shall be instituted in or issued by any Civil Court in [1][a Part A State or a Part C State] in respect of such debts and liabilities;

The debtor incompetent— to contract debts, to incumber or alienate property, to grant receipts for rent

thirdly, so long as the management continues, the debtor shall be incompetent—

(*a*) to enter into any contract involving him in pecuniary liability, or

(*b*) to mortgage, charge, lease or alienate the property under management or any part thereof, or

(*c*) to grant valid receipts for the rents and profits arising or accruing therefrom:

Provided that nothing contained in this clause shall be deemed to preclude the manager from letting, and the debtor from taking, the whole or any part of such property on such terms consistent with this Act as may be agreed upon between the parties;

Persons other than manager incompetent to incumber or alienate property.

fourthly, so long as the management continues, no person other than the manager shall be competent to mortgage, charge, lease or alienate such property or any part thereof.

Manager to have powers of owner and to receive rents and profits; to have powers of Collector for their recovery.

10. The manager shall, during the management of the property, have all powers which the owner thereof might, as such, have legally exercised, and shall receive and recover all rents and profits due in respect of the property under management;

and for the purpose of recovering such rents and profits shall have, in addition to any powers possessed by a thakur, all the powers possessed by a Collector, under the law for the time being in force, for securing and recovering land-revenue due to Government:

Provided that he shall not, before the liquidation-scheme hereinafter mentioned has been sanctioned, demise the property under management, or any part thereof, for any term exceeding two years to take effect in possession.

Manager to pay therefrom— cost of management and repairs.

11. From the sums received or recovered under section 10, the manager shall pay—

first, the cost of the management, including the costs of necessary repairs;

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[1] *See* footnote 4 on pre-page.

secondly, the Government revenue and all debts and liabilities for the time being due or incurred [1][to the [2][Government]] in respect of the property under management; Government revenue, etc.,

thirdly, the rent (if any) due to any superior holder in respect of the said property; rent due to superior holder,

fourthly, such periodical allowance as the Commissioner may from time to time fix for the maintenance and other necessary expenses of the debtor and of such members of his family as the Commissioner directs; allowance for maintenance and expenses of debtor and family,

fifthly, the cost of such improvements of the said property as he thinks necessary, and as are approved by the Commissioner. cost of improvements, etc.

The residue shall be retained by the manager for the liquidation, in manner hereinafter provided, of the debts and liabilities mentioned in section 8, other than those so due or incurred [1][to the [2][Government]], and also for the repayment, either before or after the liquidation of such debts and liabilities, of any loan received from Government by the manager under this Act. Residue how disposed of.

CHAPTER IV.

PROOF OF DEBTS AND SCHEME FOR LIQUIDATION.

12. On the publication of the order of management, the manager shall publish in the [3][Official Gazette] a notice in English and Gujrati calling upon all persons having claims against the debtor or the property under management to notify the same in writing to such manager within six months from the date of the publication. Notice to claimants against debtor.

He shall also cause copies of such notice to be exhibited at the Mamlatdars' kacharis in the district in which the said property lies, and at such other places as he thinks fit. Copies of notice to be exhibited.

13. Every such claimant shall, along with his claim, present full particulars thereof. Claim to contain full particulars.

Every document on which the claimant founds his claim, or on which he relies in support thereof, shall be delivered to the manager along with the claim. Documents to be given up.

If the document be an entry in any book, the claimant shall produce the book to the manager, together with a copy of the entry on which he Entries in books.

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[1] Subs. by the A. O. 1937 for "to Govt.".
[2] Subs. by the A. O. 1950 for "Crown".
[3] Subs. by the A. O. 1937 for "Bombay Govt. Gazette".

relies. The manager shall mark the book for the purpose of identification, and, after examining and comparing the copy with the original, shall return the book to the claimant.

Power to exclude documents not produced with claim.

If any document in the possession or under the control of the claimant is not delivered or produced by him to the manager along with the claim, the manager may refuse to receive such document in evidence on the claimant's behalf at the investigation of the case.

Claim not duly notified to be barred.

14. Every such claim (other than claims of the [1][Government]) not notified to the manager within the time and in the manner required by such notice shall, except as provided in section 19, clause (*d*), be deemed for all purposes and on all occasions, whether during the continuance of the management or afterwards, to have been duly discharged:

Admission of claims within further period of six-months.

Provided that, when proof is made to the manager that the claimant was unable to comply with the provisions of section 12, the manager may receive such claim within the further period of six months from the expiration of the original period of six months.

Determination of debts and liabilities.

15. The Manager shall inquire into the history and merits of every claim received under sections 12 and 14, and shall, in accordance with the rules to be made under this Act, determine the amount of the debts and liabilities (if any) justly due to the several claimants.

Power to rank debts and to fix interest.

16. If such amount cannot be paid at once, the manager shall then proceed to rank such debts and liabilities according to the order in which they shall be paid, and to fix the interest (if any) to be paid thereon, respectively, from the date of the final decision thereon, to the date of the payment and discharge thereof.

Schems for liquidation.

17. When the total amount of the debts and liabilities (including those due and incurred [2][to the [3][Government])] has been finally determined, the manager shall prepare and submit to the Commissioner a schedule of such debts and liabilities, and a scheme (hereinafter called the liquidation-scheme) showing the mode in which it is proposed to pay and discharge the same, whether from the income of the property under management, or with the aid of funds raised under the powers hereinafter conferred, or partly in one of such ways and partly in the other.

Provisions of scheme.

Every such scheme shall further provide for the continuance of the payments to be made by the manager under section 11, and for the repayment of the money (if any) which the manager proposes to borrow from Government under this Act, and may provide for the improvement of the property under management either from the said income, or with the aid of the funds raised as aforesaid, or partly in one of such ways and partly in the other.

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[1] Subs. by the A. O. 1950 for "Crown" which had been subs. by the A. O. 1937 for "Govt.".

[2] Subs. by the A. O. 1937 for "to Govt.".

[3] Subs. by the A. O. 1950 for "Crown".

(Chapter IV.—Proof of Debts and Scheme for Liquidation. Chapter V.—Of the Proceedings subsequent to sanction of the Liquidation-scheme.)

18. The Commissioner may— **Proceedings of Commissioner on submission of scheme.**

(*a*) as often as he thinks fit send back such scheme to the manager for revision, and direct him to make such further inquiry as may be requisite for the proper preparation of the scheme, or

(*b*) sanction any liquidation-scheme, or any revised liquidation-scheme, submitted to him, either as it stands, or subject to such modifications as he may deem expedient.

19. At any time before he has sanctioned a liquidation-scheme under section 18, the Commissioner may, by an order published in the [1][Official Gazette], direct that on a date fixed by such order the management shall be relinquished. **Power to relinquish management.**

On the date so fixed—

(*a*) the management shall terminate;

(*b*) the owner of the property under management shall be restored to the possession thereof, subject to any leases made under section 10;

(*c*) any residue of the rents and profits of the said property retained under the last clause of section 11 shall be paid to him; and

(*d*) the proceedings, processes, executions and attachments stayed and suspended under section 9, and the debts and liabilities barred by section 14, shall revive.

In calculating the periods of limitation applicable to suits to recover and enforce debts and liabilities revived under this section, the time during which the management has continued shall be excluded.

CHAPTER V.

Of the Proceedings subsequent to sanction of the Liquidation-scheme.

20. When the Commissioner sanctions the liquidation-scheme, he shall notify the fact of such sanction at such places and in such manner as the **Effects of sanctioning scheme.**

[1] Subs. by the A. O. 1937 for "Bombay Govt. Gazette".

(*Chapter V.—Of the Proceedings subsequent to sanction of the Liquidation-scheme.*)

[1][State Government] may from time to time by rule direct; and thereupon—

1st, all proceedings, processes, executions and attachments stayed or suspended under section 9 shall be for ever barred; and

2nd, every debt or liability due or owing to any person which was provable before the manager shall be extinguished, and such person shall be entitled to receive under the liquidation-scheme the amount (if any) finally awarded to him under Chapter IV of this Act in respect of such debt or liability.

Power to remove mortgagee in possession.

21. If the property under management or any part thereof be in the possession of a mortgagee or conditional vendee, the manager, at any time after the liquidation-scheme has been sanctioned as aforesaid, may, by an order in writing, require such incumbrancer to deliver up possession of the same to him at the end of the then current revenue-year.

If such incumbrancer refuse or neglect to obey such order, the manager may, without resorting to a Civil Court, enter upon the property and summarily evict therefrom the said incumbrancer and any other person obstructing or resisting on his behalf.

Nothing in this section shall be held to affect the right of any incumbrancer to receive, under the liquidation-scheme, the amount (if any) awarded to him under Chapter IV of this Act.

Power to inquire into consideration given for leases.

22. If the property under management or any part thereof be in the possession of any person claiming to hold under a lease dated within the three years immediately preceding the commencement of the management, the manager may inquire into the sufficiency of the consideration for which the lease was given; and, if such consideration appear to him insufficient, may by order, with the consent of the Commissioner, at any time after the liquidation-scheme has been sanctioned as aforesaid, either set aside the lease or require the person so in possession to pay such consideration for the said lease as the manager thinks fit; and, in default of such payment, the lease shall be cancelled.

Power to lease.

23. Subject to the rules made under section 31, the manager, after the liquidation-scheme has been sanctioned as aforesaid, shall have power to demise all or any part of the property under management for any term of years not exceeding twenty years absolute, to take effect in possession, in consideration of the payment to him of any fine, or without fine, and reserving such rents, and under such conditions, as may be agreed upon.

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[1] *See* footnote 5 on p. 607, *supra.*

(Chapter V.—Of the Proceedings subsequent to the sanction of the Liquidation-scheme.)

24. At any time after the liquidation-scheme has been sanctioned as aforesaid, the manager, with the previous assent of the Commissioner, shall have power to raise any money which may be required for carrying out such scheme— **Power to raise money by mortgage or sale.**

(*a*) by mortgaging the whole or any part of the property under management for a term not exceeding twenty years from the publication of the order of management; or

(*a*) by charging the whole or any part of such property; or

(*c*) by selling, by public auction or by private contract, and upon such terms as the manager thinks fit, such portion of the said property as may appear expedient; or

(*d*) by borrowing money from Government at such rate of interest as appears reasonable to the [1][State Government].

25. The manager's receipt for any moneys, rents or profits raised or received by him under this Act shall discharge the person paying the same therefrom and from being concerned to see to the application thereof. **Manager's receipt a discharge.**

26. When the debts and liabilities mentioned in the liquidation-scheme and the amount of any loan received from Government under clause (*d*) of section 24, together with the interest (if any) due thereon, have been paid and discharged as therein provided, or in such other manner as the Commissioner thinks fit, the manager shall publish in the [2][Official Gazette] a notice fixing a date for the termination of the management. **Termination of management.**

On the date so fixed the management shall terminate, and the owner shall be restored to the possession and enjoyment of the property under management, or of such part thereof as has not been sold by the manager under the power conferred by section 24, but subject to the leases and mortgages (if any) granted and made by the manager under the powers conferred by sections 10, 23 and 24. **Restoration of owner.**

27. If the debtor dies after the publication of the order of management and before the management has been terminated in either of the modes hereinbefore provided— **Death of debtor during management.**

1st, the management shall continue and proceed in all respects as if such debtor were still living;

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[1] *See* footnote 5 on p. 607, *supra.*

[2] Subs. by the A. O. 1937 for "Bombay Govt. Gazette".

(*Chapter V.—Of the Proceedings subsequent to the sanction of the Liquidation-scheme. Chapter VI.—Of Appeal and Revision. Chapter VII.—Miscellaneous.*)

2ndly, any person succeeding to the whole or any portion of the property under management shall, while such management continues, be subject in respect of such property to the disabilities imposed by clauses (*b*) and (*c*) of section 9; and

3rdly, no Civil Court in [1][a Part A State or a Part C State] shall, during the continuance of the management, issue any attachment or other process against any portion of the property under management, for or in respect of any debt or liability incurred by any such person whether before or after his said succession.

Mortgages, etc., made by restored thakur valid only for his life.

28. When a thakur has been restored under section 26 to the possession of any property, no mortgage, charge, lease or alienation of such property, or of any part thereof, made by such thakur, shall be valid as to any time beyond his natural life [2][unless made or granted with the previous sanction of the Commissioner].

CHAPTER VI.

Of Appeal and Revision.

Appeal

29. An appeal against any decision or order under sections 14, 15, 16 and 22, or imposing a fine or imprisonment in exercise of the powers conferred by section 35, shall lie to the Commissioner, if preferred within six weeks from the date of such decision or order.

There shall be no appeal against the decision of the Commissioner on such appeal.

Power to call for proceedings and pass order thereon.

30. The Commissioner may, of his own motion or on the application of any person concerned, call for the proceedings in any case under this Act, and pass such order thereon consistent with the provisions of this Act as he thinks fit.

CHAPTER VII.

Miscellaneous.

Power to make rules.

31. The [3][State Government] may, from time to time, make rules consistent with this Act—

(*a*) to regulate the security to be required from subordinate officers under this Act;

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[1] *See* footnote 4 on p. 613, *supra.*

[2] Ins. by the Bombay Repealing and Amending Act, 1919 (Bom. 2 of 1919), s. 2 and Sch. I.

[3] *See* footnote 5 on p. 607, *supra.*

(*b*) to regulate the procedure in all cases under this Act;

(*c*) for the guidance of officers inquiring into and determining on claims under Chapter IV of this Act; and in particular as to the allowance of interest (if any) on each of the principal debts and liabilities so determined, from the date on which it was incurred down to the date of the determination, and on the aggregate amount of such debts and liabilities from the date of the determination down to the date of payment, and as to the order of paying debts and liabilities and repaying any loan received hereunder from Government;

(*d*) for investing any moneys received or raised by the manager under this Act in any [1][Government securities] and for the sale of such securities; and

(*e*) generally to carry out the provisions of this Act.

Such rules shall be published in the [2][Official Gazette], and when so published shall have the force of law.

Power to appoint new manager.

32. The [3][State Government] may suspend or remove any manager, and may appoint any officer in the stead of any manager appointed under this Act; and thereupon the management then vested under this Act in the former manager shall become vested in the new manager.

Every such new manager shall have the same powers as if he had been originally appointed.

Managers and their agents to be public servants.

33. Every manager appointed under this Act and every agent of such manager shall be deemed a public servant within the meaning of the Indian Penal Code.

XLV of 1860.

Investigation, a judicial proceeding.

34. Every investigation conducted by the manager with reference to any claim preferred before him under this Act, or to any matter connected with any such claim, shall be taken to be a judicial proceeding within the meaning of the Indian Penal Code.

XLV of 1860.

Power to summon witnesses and compel production of documents.

35. For the purposes of this Act, the manager and any officer making an inquiry under section 5 may summon and enforce the attendance of witnesses and compel them to give evidence, and compel the production of documents by the same means and, as far as possible, in the same manner as is provided in the case of a Civil Court by the [4]Code of Civil Procedure.

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[1] Subs. by the A. O. 1950 for "securities of the Central Government or of a Provincial Government" which had been subs. by the A. O. 1948 for "Govt. securities of British India".

[2] Subs. by the A. O. 1937 for "Bombay Govt. Gazette"

[3] *See* nootnote 5 on p. 607, *supra*.

[4] *See* now the Code of Civil Procedure, 1908, (5 of 1908).

Bar of suits.

36. No suit or other proceeding shall be maintained against any person in respect of anything done by him *bona fide* pursuant to this Act.

Saving of jurisdiction of Courts in Broach and Kaira in respect of certain suits.

37. Nothing in this Act precludes the Courts in Broach and Kaira having jurisdiction in suits relating to the succession to any immoveable property brought under the operation of this Act from entertaining and disposing of such suits; but to all such suits the manager of such property shall be made a party.

Exemption of certain thakurs from certain provisions of Act.

38. Nothing in section 9 shall be deemed to render any of the following thakurs, namely, the thakur of Ahmod, the thakur of Sarod, the thakur of Kerwara, the thakur of Dehej, and the thakur of Janiadra, incompetent to enter into contracts involving him in pecuniary liability, nor shall anything in section 28 apply to any of the said thakurs:

Provided that, if any such thakur has, since the scheme for the settlement of his debts and liabilities was approved under section 11 of the said [1]Act No. XV of 1871, entered into any contract involving him in pecuniary liability exceeding the average annual income derived during the previous five years from immovable property after deducting therefrom the land-tax and other dues [2][of the [3][Government]], the [4][State Government] may, by notification in the [5][Official Gazette], declare that the exemption made by the former part of this section shall cease in his case, and thereupon such exemption shall cease accordingly.

THE BANKI LAWS ACT, 1881.

ACT No. XXV of 1881.[6]

[*27th October, 1881.*]

An Act to amend the law in the Mahal of Banki.

Preamble.

Whereas it has been determined to annex the territory comprised in the mahal of Banki to the district of Cuttack:

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[1] Act 15 of 1871 was rep. by the Broach and Kaira Incumbered Estates Act, 1877 (14 of 1877).

[2] Subs. by the A. O. 1937 for 'of Govt.".

[3] Subs. by the A. O. 1950 for "Crown".

[4] *See* footnote 5 on p. 607, *supra.*

[5] Subs. by the A. O. 1937 for "Bombay Govt. Gazette".

[6] For Statement of Objects and Reasons, *see* Gazette of India, 1881, Part V, p. 991, and for Proceedings in Council, *see ibid,* Supplement, 1881, pp. 637, 647 and 1244.

And whereas the said territory forms portion of a scheduled district under the Scheduled Districts Act, 1874[1]: XIV of 1874.

And whereas it is expedient that the law in force in the said territory should, on such annexation, be the same as the law in force in the district of Cuttack, and that the said territory should cease to be a portion of a scheduled district;

It is hereby enacted as follows:—

1. This Act may be called the Banki Laws Act, 1881. Short title.

2. All enactments which shall, on the first day of April, 1882, be in force in the district of Cuttack and not in the said territory shall be deemed to come into force in the said territory on that day: Laws of Cuttack to apply.

And all enactments which shall on that day be in force in the said territory and not in the district of Cuttack shall be deemed to be repealed on and from that day in the said territory. Other laws repealed.

3. [*Pending proceedings.*] *Rep. by the Amending Act, 1891* (*XII of 1891*).

4. On and from the said first day of April, 1882, the said territory shall cease to be a portion of a scheduled district; and in Part III of the first schedule to the said Scheduled Districts Act, 1874,[1] for the words "Mahals of Angul and Banki," the words "Mahal of Angul" shall be substituted; Territory to cease to be a scheduled district. 1874.

[2]* * * * * * * * *

THE NEGOTIABLE INSTRUMENTS ACT, 1881.

CONTENTS.

PREAMBLE.

CHAPTER I.

PRELIMINARY.

SECTIONS.

1. Short title.
   Local extent
   Saving of usages relating to hundis, etc.
   Commencement.
2. [*Repealed.*]
3. Interpretation-clause.

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[1] Rep. by the A. O. 1937.

[2] The remainder of s. 4 (relating to the repeal of references to Banki in Regulations 12 and 13 of 1805 and 11 of 1816), rep. by the Amending Act. 1891 (12 of 1891).

CHAPTER II.

Of Notes, Bills and Cheques.

Sections.

4. "Promissory note."
5. "Bill of exchange."
6. "Cheque."
7. "Drawer."
"Drawee."
"Drawee in case of need."
"Acceptor."
"Acceptor for honour."
"Payee."
8. "Holder."
9. "Holder in due course."
10. "Payment in due course."
11. Inland instrument.
12. Foreign instrument.
13. "Negotiable instrument."
14. Negotiation.
15. Indorsement.
16. Indorsement "in blank" and "in full."
"Indorsee."
17. Ambiguous instruments.
18. Where amount is stated differently in figures and words.
19. Instruments payable on demand.
20. Inchoate stamped instruments.
21. "At sight."
"On presentment."
"After sight."
22. "Maturity."
Days of grace.
23. Calculating maturity of bill or note payable so many months after date or sight.
24. Calculating maturity of bill or note payable so many days after date or sight.
25. When day of maturity is a holiday.

CHAPTER III.

PARTIES TO NOTES, BILLS AND CHEQUES.

SECTIONS.

26. Capacity to make, etc., promissory notes, etc. Minor.
27. Agency.
28. Liability of agent signing.
29. Liability of legal representative signing.
30. Liability of drawer.
31. Liability of drawee of cheque.
32. Liability of maker of note and acceptor of bill.
33. Only drawee can be acceptor except in need or for honour.
34. Acceptance by several drawees not partners.
35. Liability of indorser.
36. Liability of prior parties to holder in due course.
37. Maker, drawer and acceptor principals.
38. Prior party a principal in respect of each subsequent party.
39. Suretyship.
40. Discharge of indorser's liability.
41. Acceptor bound, although indorsement forged.
42. Acceptance of bill drawn in fictitious name.
43. Negotiable instrument made, etc., without consideration.
44. Partial absence or failure of money-consideration.
45. Partial failure of consideration not consisting of money.
45A. Holder's right to duplicate of lost bill.

CHAPTER IV

OF NEGOTIATION.

46. Delivery.
47. Negotiation by delivery.
48. Negotiation by indorsement.
49. Conversion of indorsement in blank into indorsement in full.
50. Effect of indorsement.
51. Who may negotiate.

SECTIONS.

52. Indorser who excludes his own liability or makes it conditional.
53. Holder deriving title from holder in due course.
54. Instrument indorsed in blank.
55. Conversion of indorsement in blank into indorsement in full.
56. Indorsement for part of sum due.
57. Legal representative cannot by delivery only negotiate instrument indorsed by deceased.
58. Instrument obtained by unlawful means or for unlawful consideration.
59. Instrument acquired after dishonour or when overdue.
Accommodation note or bill.
60. Instrument negotiable till payment or satisfaction.

CHAPTER V.

OF PRESENTMENT.

61. Presentment for acceptance.
62. Presentment of promissory note for sight.
63. Drawee's time for deliberation.
64. Presentment for payment.
65. Hours for presentment.
66. Presentment for payment of instrument payable after date or sight.
67. Presentment for payment of promissory note payable by instalments.
68. Presentment for payment of instrument payable at specified place and not elsewhere.
69. Instrument payable at specified place.
70. Presentment where no exclusive place specified.
71. Presentment when maker, etc., has no known place of business or residence.
72. Presentment of cheque to charge drawer.
73. Presentment of cheque to charge any other person.
74. Presentment of instrument payable on demand.
75. Presentment by or to agent, representative of deceased, or assignee of insolvent.

SECTIONS.

75A. Excuse for delay in presentment for acceptance or payment.

76. When presentment unnecessary.

77. Liability of banker for negligently dealing with bill presented for payment.

CHAPTER VI.

OF PAYMENT AND INTEREST.

78. To whom payment should be made.

79. Interest when rate specified.

80. Interest when no rate specified.

81. Delivery of instrument on payment, or indemnity in case of loss.

CHAPTER VII.

OF DISCHARGE FROM LIABILITY ON NOTES, BILLS AND CHEQUES.

82. Discharge from liability

(*a*) by cancellation;

(*b*) by release;

(*c*) by payment.

83. Discharge by allowing drawee more than forty-eight hours to accept.

84. When cheque not duly presented and drawer damaged thereby.

85. Cheque payable to order.

85A. Draft drawn by one branch of a bank on another payable to order.

86. Parties not consenting discharged by qualified or limited acceptance.

87. Effect of material alteration.
Alteration by indorsee.

88. Acceptor or indorser bound notwithstanding previous alteration.

89. Payment of instrument on which alteration is not apparent.

90. Extinguishment of rights of action on bill in acceptor's hands.

CHAPTER VIII.

Of Notice of Dishonour.

Sections.

91. Dishonour by non-acceptance.
92. Dishonour by non-payment.
93. By and to whom notice should be given.
94. Mode in which notice may be given.
95. Party receiving must transmit notice of dishonour.
96. Agent for presentment.
97. When party to whom notice given is dead.
98. When notice of dishonour is unnecessary.

CHAPTER IX.

Of Noting and Protest.

99. Noting.
100. Protest.
Protest for better security.
101. Contents of protest.
102. Notice of protest.
103. Protest for non-payment after dishonour by non-acceptance.
104. Protest of foreign bills.
104A. When noting equivalent to protest.

CHAPTER X.

Of Reasonable Time.

105. Reasonable time.
106. Reasonable time of giving notice of dishonour.
107. Reasonable time for transmitting such notice.

CHAPTER XI.

Of Acceptance and Payment for Honour and Reference in Case of Need.

108. Acceptance for honour.
109. How acceptance for honour must be made.

SECTIONS.

110. Acceptance not specifying for whose honour it is made.
111. Liability of acceptor for honour.
112. When acceptor for honour may be charged.
113. Payment for honour.
114. Right of payer for honour.
115. Drawee in case of need.
116. Acceptance and payment without protest.

CHAPTER XII.

OF COMPENSATION.

117. Rules as to compensation.

CHAPTER XIII.

SPECIAL RULES OF EVIDENCE.

118. Presumptions as to negotiable instruments—
(*a*) of consideration;
(*b*) as to date;
(*c*) as to time of acceptance;
(*d*) as to time of transfer;
(*e*) as to order of indorsements;
(*f*) as to stamp;
(*g*) that holder is a holder in due course.
119. Presumption on proof of protest.
120. Estoppel against denying original validity of instrument.
121. Estoppel against denying capacity of payee to indorse.
122. Estoppel against denying signature or capacity of prior party.

CHAPTER XIV.

OF CROSSED CHEQUES.

123. Cheque crossed generally.
124. Cheque crossed specially.

SECTIONS.

125. Crossing after issue.

126. Payment of cheque crossed generally.

Payment of cheque crossed specially.

127. Payment of cheque crossed specially more than once.

128. Payment in due course of crossed cheque.

129. Payment of crossed cheque out of due course.

130. Cheque bearing "not negotiable."

131. Non-liability of banker receiving payment of cheque.

131A. Application of Chapter to drafts.

CHAPTER XV.

OF BILLS IN SETS.

132. Set of bills.

133. Holder of first acquired part entitled to all.

CHAPTER XVI.

OF INTERNATIONAL LAW.

134. Law governing liability of maker, acceptor or indorser of foreign instrument.

135. Law of place of payment governs dishonour.

136. Instrument made, etc., out of the States of India, but in accordance with the law of the States.

137. Presumption as to foreign law.

CHAPTER XVII.

NOTARIES PUBLIC.

138. Power to appoint notaries public.

139. Power to make rules for notaries public.

SCHEDULE.—[Repealed.]

(*Chapter I.—Preliminary*).

ACT No. XXVI of 1881.[1]

[*9th December 1881.*]

An Act to define and amend the law relating to Promissory Notes, Bills of Exchange and Cheques.

WHEREAS it is expedient to define and amend the law relating to promissory notes, bills of exchange and cheques; It is hereby enacted as follows:— Preamble.

CHAPTER I.

PRELIMINARY.

1. This Act may be called the Negotiable Instruments Act, 1881. Short title.

It extends to [2][the whole of India (except Part B States)] but nothing herein contained affects the [3]Indian Paper Currency Act, 1871, section 21, or affects any local usage relating to any instrument in an Oriental language: Provided that such usages may be excluded by any words in the body of the instrument which indicate an intention that the legal relations of the parties thereto shall be governed by this Act; and it shall come into force on the first day of March, 1882. Local extent. Saving of usages relating to hundis, etc. Commencement.

1 of 1871.

2. [*Repeal of enactments.*] *Rep. by the Amending Act, 1891 (XII of 1891).*

3. In this Act— Interpretation-Clause.

[4]["States" means a Part A State or a Part C State and "States" means all the territories for the time being comprised within Part A States and Part C States.]

"banker" includes also persons or a corporation or company acting as bankers; and "Banker."

"notary public" includes also any person appointed by the [5][Central Government] to perform the functions of a notary public under this Act. "Notary public."

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[1] For Statement of Objects and Reasons, *see* Gazette of India, 1876, p. 1836; for the Reports of the Select Committee, *see ibid*, 1877, Pt. V, p. 321; 1878, Pt. V, p. 145, 1879, Pt. V, p. 75; 1881, Pt. V, p. 85; for discussions in Council, *see ibid*, 1876, Supplement, p. 1081; and *ibid*, 1881, Supplement, p. 1409.

This Act has been extended to Berar by the Berar Laws Act, 1941 (4 of 1941) and applied to the Darjeeling District by West Bengal Govt. notification No. 2772-J, dated 11th June 1948.

For summary procedure on negotiable instruments, *see* the Code of Civil Procedure, 1908 (Act 5 of 1908), Sch. I, Order XXXVII.

[2] Subs. by the A. O. 1950 for "all the Provinces of India" which had been subs. by the A. O. 1948 for "British India".

[3] Rep. by the Indian Paper Currency Act, 1923 (10 of 1923). *See* now the Reserve Bank of India Act, 1934 (2 of 1934), s. 31.

[4] Ins. by the A. O. 1950.

[5] Subs. by the A. O. 1937 for "L. G." which had been subs. for "G. G. in C." by the Decentralization Act, 1914 (4 of 1914), s. 2 and Sch., Pt. I.

CHAPTER II.

Of Notes, Bills and Cheques.

Promissory note."

4. A "promissory note" is an instrument in writing (not being a bank-note or a currency-note) containing an unconditional undertaking, signed by the maker, to pay a certain sum of money only to, or to the order of, a certain person, or to the bearer of the instrument.

Illustrations.

A signs instruments in the following terms:

(*a*) "I promise to pay B or order Rs. 500."

(*b*) "I acknowledge myself to be indebted to B in Rs. 1,000, to be paid on demand, for value received."

(*c*) "Mr. B, I O U Rs. 1,000."

(*d*) "I promise to pay B Rs. 500 and all other sums which shall be due to him."

(*e*) "I promise to pay B Rs. 500, first deducting thereout any money which he may owe me."

(*f*) "I promise to pay B Rs. 500 seven days after my marriage with C."

(*g*) "I promise to pay B Rs. 500 on D's death, provided D leaves me enough to pay that sum."

(*h*) "I promise to pay B Rs. 500 and to deliver to him my black horse on 1st January next."

The instruments respectively marked (*a*) and (*b*) are promissory notes. The instruments respectively marked (*c*), (*d*), (*e*), (*f*), (*g*) and (*h*) are not promissory notes.

"Bill of exchange".

5. A "bill of exchange" is an instrument in writing containing an unconditional order, signed by the maker, directing a certain person to pay a certain sum of money only to, or to the order of, a certain person or to the bearer of the instrument.

A promise or order to pay is not "conditional," within the meaning of this section and section 4, by reason of the time for payment of the amount or any instalment thereof being expressed to be on the lapse of a certain period after the occurrence of a specified event which, according to the ordinary expectation of mankind, is certain to happen, although the time of its happening may be uncertain.

The sum payable may be "certain," within the meaning of this section and section 4, although it includes future interest or is payable at an indicated rate of exchange, or is according to the course of exchange, and although the instrument provides that, on default of payment of an instalment, the balance unpaid shall become due.

The person to whom it is clear that the direction is given or that payment is to be made may be a "certain person", within the meaning of this section and section 4, although he is mis-named or designated by description only,

(*Chapter II.—Of Notes, Bills and Cheques.*)

6. A "cheque" is a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand. "Cheque."

7. The maker of a bill of exchange or cheque is called the "drawer;" the person thereby directed to pay is called the "drawee." "Drawer". "Drawee."

When in the bill or in any indorsement thereon the name of any person is given in addition to the drawee to be resorted to in case of need, such person is called a "drawee in case of need." "Drawee in case of need."

After the drawee of a bill has signed his assent upon the bill, or, if there are more parts thereof than one, upon one of such parts, and delivered the same, or given notice of such signing to the holder or to some person on his behalf, he is called the "acceptor." "Acceptor."

[1][When a bill of exchange has been noted or protested for non-acceptance or for better security,] and any person accepts it *supra protest* for honour of the drawer or of any one of the indorsers, such person is called an "acceptor for honour." "Acceptor for honour."

The person named in the instrument, to whom or to whose order the money is by the instrument directed to be paid, is called the "payee." "Payee".

8. The "holder" of a promissory note, bill of exchange or cheque means any person entitled in his own name to the possession thereof and to receive or recover the amount due thereon from the parties thereto. "Holder."

Where the note, bill or cheque is lost or destroyed, its holder is the person so entitled at the time of such loss or destruction.

9. "Holder in due course" means any person who for consideration became the possessor of a promissory note, bill of exchange or cheque if payable to bearer, "Holder in due course."

or the payee or indorsee thereof, if [2][payable to order,]

before the amount mentioned in it became payable, and without having sufficient cause to believe that any defect existed in the title of the person from whom he derived his title.

10. "Payment in due course" means payment in accordance with the apparent tenor of the instrument in good faith and without negligence to any person in possession thereof under circumstances which do not afford a reasonable ground for believing that he is not entitled to receive payment of the amount therein mentioned. "Payment in due course."

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[1] Subs. by the Negotiable Instruments Act, 1885 (2 of 1885), s. 2, for "When acceptance is refused and the bill is protested for non-acceptance".

[2] Subs. by the Negotiable Instruments (Amendment) Act, 1919 (8 of 1919), s. 2, for "payable to, or to the order of, a payee".

(Chapter II—Of Notes, Bills and Cheques.)

Inland instrument.

11. A promissory note, bill of exchange or cheque drawn or made in [1][a State], and made payable in, or drawn upon any person resident in, [1][a State] shall be deemed to be an inland instrument.

Foreign instrument.

12. Any such instrument not so drawn, made or made payable shall be deemed to be a foreign instrument.

"Negotiable instrument."

13. [2][(1) A "negotiable instrument" means a promissory note bill of exchange or cheque payable either to order or to bearer.

Explanation (i).—A promissory note, bill of exchange or cheque is payable to order which is expressed to be so payable or which is expressed to be payable to a particular person, and does not contain words prohibiting transfer or indicating an intention that it shall not be transferable.

Explanation (ii).—A promissory note, bill of exchange or cheque is payable to bearer which is expressed to be so payable or on which the only or last indorsement is an indorsement in blank.

Explanation (iii).—Where a promissory note, bill of exchange or cheque, either originally or by indorsement, is expressed to be payable to the order of a specified person, and not to him or his order, it is nevertheless payable to him or his order at his option.]

[3][*(2)* A negotiable instrument may be made payable to two or more payees jointly or it may be made payable in the alternative to one of two, or one or some of several payees.]

Negotiation.

14. When a promissory note, bill of exchange or cheque is transferred to any person, so as to constitute that person the holder thereof, the instrument is said to be negotiated.

Indorsement.

15. When the maker or holder of a negotiable instrument signs the same, otherwise than as such maker, for the purpose of negotiation, on the back or face thereof or on a slip of paper annexed thereto, or so signs for the same purpose a stamped paper intended to be completed as a negotiable instrument, he is said to indorse the same, and is called the "indorser."

Indorsement "in blank" and "in full".

"Indorse".

16. [4][(1)] If the indorser signs his name only, the indorsement is said to be "in blank," and if he adds a direction to pay the amount mentioned in the instrument to, or to the order of, a specified person, the indorsement is said to be "in full," and the person so specified is called the "indorsee" of the instrument.

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[1] Subs. by the A. O. 1950 for "a Province" which had been subs. by the A. O. 1948 for "British India".

[2] Subs. by the Negotiable Instruments (Amendment) Act, 1919 (8 of 1919), s. 3. for the original sub-section.

[3] Ins. by the Negotiable Instruments (Amendment) Act, 1914 (5 of 1914), s. 2.

[4] Ins. by s. 3, *ibid.*

(*Chapter II.—Of Notes, Bills and Cheques.*)

[1][(2) The provisions of this Act relating to a payee shall apply with the necessary modifications to an indorsee.]

17. Where an instrument may be construed either as a promissory note or bill of exchange, the holder may at his election treat it as either, and the instrument shall be thenceforward treated accordingly. **Ambiguous instruments.**

18. If the amount undertaken or ordered to be paid is stated differently in figures and in words, the amount stated in words shall be the amount undertaken or ordered to be paid. **Where amount is stated differently in figures and words.**

19. A promissory note or bill of exchange, in which no time for payment is specified, and a cheque, are payable on demand. **Instruments payable on demand.**

20. Where one person signs and delivers to another a paper stamped in accordance with the law relating to negotiable instruments then in force in [2]~~[the States]~~ and either wholly blank or having written thereon an incomplete negotiable instrument, he thereby gives *prima facie* authority to the holder thereof to make or complete, as the case may be, upon it a negotiable instrument, for any amount specified therein and not exceeding the amount covered by the stamp. The person so signing shall be liable upon such instrument, in the capacity in which he signed the same, to any holder in due course for such amount: provided that no person other than a holder in due course shall recover from the person delivering the instrument anything in excess of the amount intended by him to be paid thereunder. **Inchoate stamped instruments.**

21. In a promissory note or bill of exchange the expressions "at sight" and "on presentment" mean on demand. The expression "after sight" means, in a promissory note, after presentment for sight, and, in a bill of exchange, after acceptance, or noting for non-acceptance, or protest for non-acceptance. **"At sight." "On presentment." "After sight."**

22. The maturity of a promissory note or bill of exchange is the date at which it falls due. **"Maturity."**

Every promissory note or bill of exchange which is not expressed to be payable on demand, at sight or on presentment is at maturity on the third day after the day on which it is expressed to be payable. **Days of grace.**

23. In calculating the date at which a promissory note or bill of exchange, made payable a stated number of months after date or after sight, or after a certain event, is at maturity, the period stated shall be held to terminate on the day of the month which corresponds with the day on which the instrument is dated, or presented for acceptance or sight, or noted for **Calculating maturity of bill or note payable so many months after date or sight.**

[1] Ins. by the Negotiable Instruments (Amendment) Act, 1914 (5 of 1914), s. 3.

[2] Subs. by the A. O. 1950 for "the Provinces" which had been subs. by the A. O. 1948 for "British India".

non-acceptance, or protested for non-acceptance, or the event happens, or, where the instrument is a bill of exchange made payable a stated number of months after sight and has been accepted for honour, with the day on which it was so accepted. If the month in which the period would terminate has no corresponding day, the period shall be held to terminate on the last day of such month.

Illustrations.

(*a*) A negotiable instrument, dated 29th January 1878, is made payable at one month after date. The instrument is at maturity on the third day after the 28th February 1878.

(*b*) A negotiable instrument, dated 30th August 1878, is made payable three months after date. The instrument is at maturity on the 3rd December 1878.

(*c*) A promissory note or bill of exchange, dated 31st August 1878, is made payable three months after date. The instrument is at maturity on the 3rd December 1878.

Calculating maturity of bill or note payable so many days after date or sight.

24. In calculating the date at which a promissory note or bill of exchange made payable a certain number of days after date or after sight or after a certain event is at maturity, the day of the date, or of presentment for acceptance or sight, or of protest for non-acceptance, or on which the event happens, shall be excluded.

When day of maturity is a holiday.

25. When the day on which a promissory note or bill of exchange is at maturity is a public holiday, the instrument shall be deemed to be due on the next preceding business day.

Explanation.—The expression "public holiday" includes Sundays: New Year's day, Christmas day: if either of such days falls on a Sunday, the next following Monday: Good Friday; and any other day declared by the [1][Central Government], by notification in the Official Gazette, to be a public holiday.

CHAPTER III.

PARTIES TO NOTES, BILLS AND CHEQUES.

Capacity to make, etc., promissory notes, etc.

26. Every person capable of contracting, according to the law to which he is subject, may bind himself and be bound by the making, drawing, acceptance, indorsement, delivery and negotiation of a promissory note, bill of exchange or cheque.

Minor.

A minor may draw, indorse, deliver and negotiate such instrument so as to bind all parties except himself.

[1] Subs. by the A. O. 1937 for "L. G."

Nothing herein contained shall be deemed to empower a corporation to make, indorse or accept such instruments except in cases in which, under the law for the time being in force, they are so empowered.

Agency.

27. Every person capable of binding himself or of being bound, as mentioned in section 26, may so bind himself or be bound by a duly authorized agent acting in his name.

A general authority to transact business and to receive and discharge debts does not confer upon an agent the power of accepting or indorsing bills of exchange so as to bind his principal.

An authority to draw bills of exchange does not of itself import an authority to indorse.

Liability of agent signing.

28. An agent who signs his name to a promissory note, bill of exchange or cheque without indicating thereon that he signs as agent, or that he does not intend thereby to incur personal responsibility, is liable personally on the instrument, except to those who induced him to sign upon the belief that the principal only would be held liable.

Liability of legal representative signing.

29. A legal representative of a deceased person who signs his name to a promissory note, bill of exchange or cheque is liable personally thereon unless he expressly limits his liability to the extent of the assets received by him as such.

Liability of drawer.

30. The drawer of a bill of exchange or cheque is bound, in case of dishonour by the drawee or acceptor thereof, to compensate the holder, provided due notice of dishonour has been given to, or received by, the drawer as hereinafter provided.

Liability of drawee of cheque.

31. The drawee of a cheque having sufficient funds of the drawer in his hands properly applicable to the payment of such cheque must pay the cheque when duly required so to do, and, in default of such payment, must compensate the drawer for any loss or damage caused by such default.

Liability of maker of note and acceptor of bill.

32. In the absence of a contract to the contrary, the maker of a promissory note and the acceptor before maturity of a bill of exchange are bound to pay the amount thereof at maturity according to the apparent tenor of the note or acceptance respectively, and the acceptor of a bill of exchange at or after maturity is bound to pay the amount thereof to the holder on demand.

In default of such payment as aforesaid, such maker or acceptor is bound to compensate any party to the note or bill for any loss or damage sustained by him and caused by such default.

(*Chapter III.—Parties to Notes, Bills and Cheques.*)

Only drawee can be acceptor except in need or for honour.

33. No person except the drawee of a bill of exchange, or all or some of several drawees, or a person named therein as a drawee in case of need, or an acceptor for honour, can bind himself by an acceptance.

Acceptance by several drawees not partners.

34. Where there are several drawees of a bill of exchange who are not partners, each of them can accept it for himself, but none of them can accept it for another without his authority.

Liability of indorser.

35. In the absence of a contract to the contrary, whoever indorses and delivers a negotiable instrument before maturity, without in such indorsement expressly excluding or making conditional his own liability, is bound thereby to every subsequent holder in case of dishonour by the drawee, acceptor or maker to compensate such holder for any loss or damage caused to him by such dishonour, provided due notice of dishonour has been given to, or received by, such indorser as herein-after provided.

Every indorser after dishonour is liable as upon an instrument payable on demand.

Liability of prior parties to holder in due course.

36. Every prior party to a negotiable instrument is liable thereon to a holder in due course until the instrument is duly satisfied.

Maker, drawer and acceptor principals.

37. The maker of a promissory note or cheque, the drawer of a bill of exchange until acceptance, and the acceptor are, in the absence of a contract to the contrary, respectively liable thereon as principal debtors, and the other parties thereto are liable thereon as sureties for the maker, drawer or acceptor, as the case may be.

Prior party a principal in respect of each subsequent party.

38. As between the parties so liable as sureties, each prior party is, in the absence of a contract to the contrary, also liable thereon as a principal debtor in respect of each subsequent party.

Illustration.

A draws a bill payable to his own order on B who accepts. A afterwards indorses the bill to C, C to D, and D to E. As between E and B, B is the principal debtor, and A, C and D are his sureties. As between E and A. A is the principal debtor, and C and D are his sureties. As between E and C, C is the principal debtor and D is his surety.

Suretyship.

39. When the holder of an accepted bill of exchange enters into any contract with the acceptor which, under section 134 or 135 of the Indian Contract Act, 1872, would discharge the other parties, the holder may expressly reserve his right to charge the other parties, and in such case they are not discharged. IX of 1872.

(*Chapter III.—Parties to Notes, Bills and Cheques.*)

Discharge of indorser's liability.

40. When the holder of a negotiable instrument, without the consent of the indorser, destroys or impairs the indorser's remedy against a prior party, the indorser is discharged from liability to the holder to the same extent as if the instrument had been paid at maturity.

Illustration.

A is the holder of a bill of exchange made payable to the order of B, which contains the following indorsements in blank:—

First indorsement, "B."

Second indorsement, "Peter Williams."

Third indorsement, "Wright & Co."

Fourth indorsement, "John Rozario."

This bill A puts in suit against John Rozario and strikes out, without John Rozario's consent, the indorsements by Peter Williams and Wright & Co. A is not entitled to recover anything from John Rozario.

Acceptor bound although indorsement forged.

41. An acceptor of a bill of exchange already indorsed is not relieved from liability by reason that such indorsement is forged, if he knew or had reason to believe the indorsement to be forged when he accepted the bill.

Acceptance of bill drawn in fictitious name.

42. An acceptor of a bill of exchange drawn in a fictitious name and payable to the drawer's order is not, by reason that such name is fictitious, relieved from liability to any holder in due course claiming under an indorsement by the same hand as the drawer's signature, and purporting to be made by the drawer.

Negotiable instrument made, etc., without consideration.

43. A negotiable instrument made, drawn, accepted, indorsed or transferred without consideration, or for a consideration which fails, creates no obligation of payment between the parties to the transaction. But if any such party has transferred the instrument with or without indorsement to a holder for consideration, such holder, and every subsequent holder deriving title from him, may recover the amount due on such instrument from the transferor for consideration or any prior party thereto.

Exception I.—No party for whose accommodation a negotiable instrument has been made, drawn, accepted or indorsed can, if he have paid the amount thereof, recover thereon such amount from any person who became a party to such instrument for his accommodation.

Exception II.—No party to the instrument who has induced any other party to make, draw, accept, indorse or transfer the same to him for a consideration which he has failed to pay or perform in full shall recover thereon an amount exceeding the value of the consideration (if any) which he has actually paid or performed.

(Chapter III.—Parties to Notes, Bills and Cheques. Chapter IV.—Of Negotiation.)

Partial absence or failure of money-consideration.

44. When the consideration for which a person signed a promissory note, bill of exchange or cheque consisted of money, and was originally absent in part or has subsequently failed in part, the sum which a holder standing in immediate relation with such signer is entitled to receive from him is proportionally reduced.

Explanation.—The drawer of a bill of exchange stands in immediate relation with the acceptor. The maker of a promissory note, bill of exchange or cheque stands in immediate relation with the payee, and the indorser with his indorsee. Other signers may by agreement stand in immediate relation with a holder.

Illustration.

A draws a bill on B for Rs. 500 payable to the order of A. B accepts the bill, but subsequently dishonours it by non-payment. A sues B on the bill. B proves that it was accepted for value as to Rs. 400, and as an accommodation to the plaintiff as to the residue. A can only recover Rs. 400.

Partial failure of consideration not consisting of money.

45. Where a part of the consideration for which a person signed a promissory note, bill of exchange or cheque, though not consisting of money, is ascertainable in money without collateral enquiry, and there has been a failure of that part, the sum which a holder standing in immediate relation with such signer is entitled to receive from him is proportionally reduced.

Holder's right to duplicate of lost bill.

[1]**[45A.** Where a bill of exchange has been lost before it is over-due, the person who was the holder of it may apply to the drawer to give him another bill of the same tenor, giving security to the drawer, if required, to indemnify him against all persons whatever in case the bill alleged to have been lost shall be found again.

If the drawer on request as aforesaid refuses to give such duplicate bill, he may be compelled to do so.]

CHAPTER IV.

OF NEGOTIATION.

Delivery.

46. The making, acceptance or indorsement of a promissory note, bill of exchange or cheque is completed by delivery, actual or constructive.

As between parties standing in immediate relation, delivery to be effectual must be made by the party making, accepting or indorsing the instrument or by a person authorized by him in that behalf.

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[1] Ins. by the Negotiable Instruments Act, 1885 (2 of 1885), s. 3.

As between such parties and any holder of the instrument other than a holder in due course, it may be shown that the instrument was delivered conditionally or for a special purpose only, and not for the purpose of transferring absolutely the property therein.

A promissory note, bill of exchange or cheque payable to bearer is negotiable by the delivery thereof.

A promissory note, bill of exchange or cheque payable to order is negotiable by the holder by indorsement and delivery thereof.

47. Subject to the provisions of section 58, a promissory note, bill of exchange or cheque payable to bearer is negotiable by delivery thereof. Negotiation by delivery.

Exception.—A promissory note, bill of exchange or cheque delivered on condition that it is not to take effect except in a certain event is not negotiable (except in the hands of a holder for value without notice of the condition) unless such event happens.

Illustrations.

(*a*) A, the holder of a negotiable instrument payable to bearer, delivers it to B's agent to keep for B. The instrument has been negotiated.

(*b*) A, the holder of a negotiable instrument payable to bearer, which is in the hands of A's banker, who is at the time the banker of B, directs the banker to transfer the instrument to B's credit in the banker's account with B. The banker does so, and accordingly now possesses the instrument as B's agent. The instrument has been negotiated, and B has become the holder of it.

48. Subject to the provisions of section 58, a promissory note, bill of exchange or cheque [1][payable to order] is negotiable by the holder by indorsement and delivery thereof. Negotiation by indorsement.

49. The holder of a negotiable instrument indorsed in blank may, without signing his own name, by writing above the indorser's signature a direction to pay to any other person as indorsee, convert the indorsement in blank into an indorsement in full; and the holder does not thereby incur the responsibility of an indorser. Conversion of indorsement in blank into indorsement in full.

50. The indorsement of a negotiable instrument followed by delivery transfers to the indorsee the property therein with the right of further negotiation; but the indorsement may, by express words, restrict or exclude such right, or may merely constitute the indorsee an agent to indorse the instrument or to receive its contents for the indorser, or for some other specified person. Effect of indorsement.

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[1] Subs. by the Negotiable Instruments (Amendment) Act, 1919 (8 of 1919), s. 4, for "payable to the order of a specified person or to a specified person or order".

Illustrations.

B signs the following indorsements on different negotiable instruments payable to bearer:—

(*a*) "Pay the contents to C only."

(*b*) "Pay C for my use."

(*c*) "Pay C or order for the account of B."

(*d*) "The within must be credited to C."

These indorsements exclude the right of further negotiation by C.

(*e*) "Pay C."

(*f*) "Pay C value in account with the Oriental Bank."

(*g*) "Pay the contents to C, being part of the consideration in a certain deed of assignment executed by C to the indorser and others."

These indorsements do not exclude the right of further negotiation by C.

Who may negotiate.

51. Every sole maker, drawer, payee or indorsee, or all of several joint makers, drawers, payees or indorsees, of a negotiable instrument may, if the negotiability of such instrument has not been restricted or excluded as mentioned in section 50, indorse and negotiate the same.

Explanation.—Nothing in this section enables a maker or drawer to indorse or negotiate an instrument, unless he is in lawful possession or is holder thereof; or enables a payee or indorsee to indorse or negotiate an instrument, unless he is holder thereof.

Illustration.

A bill is drawn payable to A or order. A indorses it to B, the indorsement not containing the words "or order" or any equivalent words. B may negotiate the instrument.

Indorser who excludes his own liability or makes it conditional.

52. The indorser of a negotiable instrument may, by express words in the indorsement, exclude his own liability thereon, or make such liability or the right of the indorsee to receive the amount due thereon depend upon the happening of a specified event, although such event may never happen.

Where an indorser so excludes his liability and afterwards becomes the holder of the instrument, all intermediate indorsers are liable to him.

Illustrations.

(*a*) The indorser of a negotiable instrument signs his name adding the words—"Without recourse."

Upon this indorsement he incurs no liability.

(*b*) A is the payee and holder of a negotiable instrument. Excluding personal liability by an indorsement "without recourse," he transfers the instrument to B, and B indorses it to C, who indorses it to A. A is not only reinstated in his former rights, but has the rights of an indorsee against B and C.

(*Chapter IV.—Of Negotiation.*)

53. A holder of a negotiable instrument who derives title from a holder in due course has the rights thereon of that holder in due course.

Holder deriving title from holder in due course.

54. Subject to the provisions hereinafter contained as to crossed cheques, a negotiable instrument indorsed in blank is payable to the bearer thereof even although originally payable to order.

Instrument indorsed in blank.

55. If a negotiable instrument, after having been indorsed in blank, is indorsed in full, the amount of it cannot be claimed from the indorser in full, except by the person to whom it has been indorsed in full, or by one who derives title through such person.

Conversion of indorsement in blank into indorsement in full.

56. No writing on a negotiable instrument is valid for the purpose of negotiation if such writing purports to transfer only a part of the amount appearing to be due on the instrument, but, where such amount has been partly paid, a note to that effect may be indorsed on the instrument, which may then be negotiated for the balance.

Indorsement for part of sum due.

57. The legal representative of a deceased person cannot negotiate by delivery only a promissory note, bill of exchange or cheque payable to order and indorsed by the deceased but not delivered.

Legal representative cannot by delivery only negotiate instrument indorsed by deceased.

58. When a negotiable instrument has been lost, or has been obtained from any maker, acceptor or holder thereof by means of an offence or fraud, or for an unlawful consideration, no possessor or indorsee who claims through the person who found or so obtained the instrument is entitled to receive the amount due thereon from such maker, acceptor or holder, or from any party prior to such holder, unless such possessor or indorsee is, or some person through whom he claims was, a holder thereof in due course.

Instrument obtained by unlawful means or for unlawful consideration.

59. The holder of a negotiable instrument, who has acquired it after dishonour, whether by non-acceptance or non-payment, with notice thereof, or after maturity, has only, as against the other parties, the rights thereon of his transferor:

Instrument acquired after dishonour or when overdue.

Provided that any person who, in good faith and for consideration, becomes the holder, after maturity, of a promissory note or bill of exchange made, drawn or accepted without consideration, for the purpose of enabling some party thereto to raise money thereon, may recover the amount of the note or bill from any prior party.

Accommodation note or bill.

Illustration.

The acceptor of a bill of exchange, when he accepted it, deposited with the drawer certain goods as a collateral security for the payment of the bill, with power to the drawer to sell the goods and apply the proceeds in discharge of the bill if it were not paid at maturity. The bill not having been paid at maturity, the drawer sold the goods and retained the proceeds, but indorsed the bill to A. A's title is subject to the same objection as the drawer's title.

Instrument negotiable till payment or satisfaction.

60. A negotiable instrument may be negotiated (except by the maker, drawee or acceptor after maturity) until payment or satisfaction thereof by the maker, drawee or acceptor at or after maturity, but not after such payment or satisfaction.

CHAPTER V.

Of Presentment.

Presentment for acceptance.

61. A bill of exchange payable after sight must, if no time or place is specified therein for presentment, be presented to the drawee thereof for acceptance, if he can, after reasonable search, be found, by a person entitled to demand acceptance, within a reasonable time after it is drawn, and in business hours on a business day. In default of such presentment, no party thereto is liable thereon to the person making such default.

If the drawee cannot, after reasonable search, be found, the bill is dishonoured.

If the bill is directed to the drawee at a particular place, it must be presented at that place; and if at the due date for presentment he cannot, after reasonable search, be found there, the bill is dishonoured.

[1][Where authorized by agreement or usage, a presentment through the post office by means of a registered letter is sufficient.]

Presentment of promissory note for sight.

62. A promissory note, payable at a certain period after sight, must be presented to the maker thereof for sight (if he can, after reasonable search, be found) by a person entitled to demand payment, within a reasonable time after it is made and in business hours on a business day. In default of such presentment, no party thereto is liable thereon to the person making such default.

Drawee's time for deliberation.

63. The holder must, if so required by the drawee of a bill of exchange presented to him for acceptance, allow the drawee [2][forty-eight] hours (exclusive of public holidays) to consider whether he will accept it.

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[1] Ins. by the Negotiable Instruments Act, 1885 (2 of 1885), s. 4.

[2] Subs. by the Negotiable Instruments (Amendment) Act, 1921 (12 of 1921), s 2. for "twenty-four".

(*Chapter V.—Of Presentment.*)

64. Promissory notes, bills of exchange and cheques must be presented for payment to the maker, acceptor or drawee thereof respectively, by or on behalf of the holder as hereinafter provided. In default of such presentment, the other parties thereto are not liable thereon to such holder. Presentment for payment.

[1][Where authorized by agreement or usage, a presentment through the post office by means of a registered letter is sufficient.]

Exception.—Where a promissory note is payable on demand and is not payable at a specified place, no presentment is necessary in order to charge the maker thereof.

65. Presentment for payment must be made during the usual hours of business, and, if at a banker's, within banking hours. Hours for presentment.

66. A promissory note or bill of exchange, made payable at a specified period after date or sight thereof, must be presented for payment at maturity. Presentment for payment of instrument payable after date or sight.

67. A promissory note payable by instalments must be presented for payment on the third day after the date fixed for payment of each instalment; and non-payment on such presentment has the same effect as non-payment of a note at maturity. Presentment for payment of promissory note payable by instalments.

68. A promissory note, bill of exchange or cheque made, drawn or accepted payable at a specified place and not elsewhere must, in order to charge any party thereto, be presented for payment at that place. Presentment for payment of instrument payable at specified place and not elsewhere.

69. A promissory note or bill of exchange made, drawn or accepted payable at a specified place must, in order to charge the maker or drawer thereof, be presented for payment at that place. Instrument payable at specified place.

70. A promissory note or bill of exchange, not made payable as mentioned in sections 68 and 69, must be presented for payment at the place of business (if any), or at the usual residence, of the maker, drawee or acceptor thereof, as the case may be. Presentment where no exclusive place specified.

71. If the maker, drawee or acceptor of a negotiable instrument has no known place of business or fixed residence, and no place is specified in the instrument for presentment for acceptance or payment, such presentment may be made to him in person wherever he can be found. Presentment when maker, etc., has no known place of business or residence.

[1] Ins. by the Negotiable Instruments Act, 1885 (2 of 1885), s. 4.

(*Chapter V.—Of Presentment.*)

Presentment of cheque to charge drawer.

72. [1][Subject to the provisions of section 84,] a cheque must, in order to charge the drawer, be presented at the bank upon which it is drawn before the relation between the drawer and his banker has been altered to the prejudice of the drawer.

Presentment of cheque to charge any other person.

73. A cheque must, in order to charge any person except the drawer, be presented within a reasonable time after delivery thereof by such person.

Presentment of instrument payable on demand.

74. Subject to the provisions of section 31, a negotiable instrument payable on demand must be presented for payment within a reasonable time after it is received by the holder.

Presentment by or to agent, representative of deceased or assignee of insolvent.

75. Presentment for acceptance or payment may be made to the duly authorized agent of the drawee, maker or acceptor, as the case may be, or, where the drawee, maker or acceptor has died, to his legal representative, or, where he has ben declared an insolvent, to his assignee.

Excuse for delay in presentment for acceptance or payment.

[2][**75A.** Delay in presentment [3][for acceptance or payment] is excused if the delay is caused by circumstances beyond the control of the holder, and not imputable to his default, misconduct or negligence. When the cause of delay ceases to operate, presentment must be made within a reasonable time.]

When presentment unnecessary.

76. No presentment for payment is necessary, and the instrument is dishonoured at the due date for presentment, in any of the following cases:—

(*a*) if the maker, drawee or acceptor intentionally prevents the presentment of the instrument, or,

if the instrument being payable at his place of business, he closes such place on a business day during the usual business hours, or,

if the instrument being payable at some other specified place, neither he nor any person authorized to pay it attends at such place during the usual business hours, or,

if the instrument not being payable at any specified place, he cannot after due search be found;

(*b*) as against any party sought to be charged therewith, if he has engaged to pay notwithstanding non-presentment;

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[1] Ins. by the Negotiable Instruments (Amendment) Act, 1897 (6 of 1897), s. 2.

[2] Ins. by the Negotiable Instruments (Amendment) Act, 1920 (25 of 1920), s. 2.

[3] Subs. by the Negotiable Instruments (Amendment) Act, 1921 (12 of 1921), s. 3, for "for payment".

(*c*) as against any party if, after maturity, with knowledge that the instrument has not been presented—

he makes a part payment on account of the amount due on the instrument, or promises to pay the amount due thereon in whole or in part,

or otherwise waives his right to take advantage of any default in presentment for payment;

(*d*) as against the drawer, if the drawer could not suffer damage from the want of such presentment.

77. When a bill of exchange accepted payable at a specified bank has been duly presented there for payment and dishonoured, if the banker so negligently or improperly keeps, deals with or delivers back such bill as to cause loss to the holder, he must compensate the holder for such loss.

Liability of banker for negligently dealing with bill presented for payment.

CHAPTER VI.

Of Payment and Interest.

78. Subject to the provisions of section 82, clause (*c*), payment of the amount due on a promissory note, bill of exchange or cheque must, in order to discharge the maker or acceptor, be made to the holder of the instrument.

To whom payment should be made.

79. When interest at a specified rate is expressly made payable on a promissory note or bill of exchange, interest shall be calculated at the rate specified, on the amount of the principal money due thereon, from the date of the instrument, until tender or realization of such amount, or until such date after the institution of a suit to recover such amount as the Court directs.

Interest when rate specified.

80. When no rate of interest is specified in the instrument, interest on the amount due thereon shall, [1][notwithstanding any agreement relating to interest between any parties to the instrument,] be calculated at the rate of six per centum per annum from the date at which the same ought to have been paid by the party charged until tender or realization of the amount due thereon, or until such date after the institution of a suit to recover such amount as the Court directs.

Interest when no rate specified.

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[1] Subs. by the Negotiable Instruments (Interest) Act, 1926 (30 of 1926), s. 2, for "except in cases provided for by the Code of Civil Procedure, section 532".

(Chapter VI.—Of Payment and Interest. Chapter VII.—Of Discharge from Liability on Notes, Bills and Cheques.)

Explanation.—When the party charged is the indorser of an instrument dishonoured by non-payment, he is liable to pay interest only from the time that he receives notice of the dishonour.

Delivery of instrument on payment, or indemnity in case of loss.

81. Any person liable to pay, and called upon by the holder thereof to pay, the amount due on a promissory note, bill of exchange or cheque is before payment entitled to have it shown, and is on payment entitled to have it delivered up, to him, or, if the instrument is lost or cannot be produced, to be indemnified against any further claim thereon against him.

CHAPTER VII.

Of Discharge from Liability on Notes, Bills and Cheques.

Discharge from liability—

by cancellation;

by release;

by payment.

82. The maker, acceptor or indorser respectively of a negotiable instrument is discharged from liability thereon—

(*a*) to a holder thereof who cancels such acceptor's or indorser's name with intent to discharge him, and to all parties claiming under such holder;

(*b*) to a holder thereof who otherwise discharges such maker, acceptor or indorser, and to all parties deriving title under such holder after notice of such discharge;

(*c*) to all parties thereto, if the instrument is payable to bearer, or has been indorsed in blank, and such maker, acceptor or indorser makes payment in due course of the amount due thereon.

Discharge by allowing drawee more than forty-eight hours to accept.

83. If the holder of a bill of exchange allows the drawee more than [1][forty-eight] hours, exclusive of public holidays, to consider whether he will accept the same, all previous parties not consenting to such allowance are thereby discharged from liability to such holder.

When cheque not duly presented and drawer damaged thereby.

[2][**84.** (*1*) Where a cheque is not presented for payment within a reasonable time of its issue, and the drawer or person on whose account it is drawn had the right, at the time when presentment ought to have been made, as between himself and the banker, to have the cheque paid and suffers actual damage through the delay, he is discharged to the extent of such damage, that is to say, to the extent to which such drawer or person is a creditor of the

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1 Subs. by the Negotiable Instruments (Amendment) Act, 1921 (12 of 1921), s. 2, for "twenty-four".

2 Subs. by the Negotiable Instruments Act, Amendment Act, 1897 (6 of 1897), s. 3, for the original section.

banker to a larger amount than he would have been if such cheque had been paid.

(*2*) In determining what is a reasonable time, regard shall be had to the nature of the instrument, the usage of trade and of bankers, and the facts of the particular case.

(*3*) The holder of the cheque as to which such drawer or person is so discharged shall be a creditor, in lieu of such drawer or person, of such banker to the extent of such discharge and entitled to recover the amount from him.]

Illustrations.

(*a*) A draws a cheque for Rs. 1,000, and, when the cheque ought to be presented, has funds at the bank to meet it. The bank fails before the cheque is presented. The drawer is discharged, but the holder can prove against the bank for the amount of the cheque.

(*b*) A draws a cheque at Umballa on a bank in Calcutta. The bank fails before the cheque could be presented in ordinary course. A is not discharged, for he has not suffered actual damage through any delay in presenting the cheque.

Cheque payable to order.

85. [1][(*1*)] Where a cheque payable to order purports to be endorsed by or on behalf of the payee, the drawee is discharged by payment in due course.

[1][(*2*) Where a cheque is originally expressed to be payable to bearer, the drawee is discharged by payment in due course to the bearer thereof, notwithstanding any endorsement whether in full or in blank appearing thereon, and notwithstanding that any such endorsement purports to restrict or exclude further negotiation.]

Drafts drawn by one branch of a bank on another payable to order.

[2][**85A.** Where any draft, that is, an order to pay money, drawn by one office of a bank upon another office of the same bank for a sum of money payable to order on demand, purports to be endorsed by or on behalf of the payee, the bank is discharged by payment in due course.]

Parties not consenting discharged by qualified or limited acceptance.

86. If the holder of a bill of exchange acquiesces in a qualified acceptance, or one limited to part of the sum mentioned in the bill, or which substitutes a different place or time for payment, or which, where the drawees are not partners, is not signed by all the drawees, all previous parties whose consent is not obtained to such acceptance are discharged as against the holder and those claiming under him, unless on notice given by the holder they assent to such acceptance.

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[1] Ins. by the Negotiable Instruments (Amendment) Act, 1934 (17 of 1934), s. 2.

[2] Ins. by the Negotiable Instruments (Amendment) Act, 1930 (25 of 1930), s. 2.

Explanation.—An acceptance is qualified—

(*a*) where it is conditional, declaring the payment to be dependent on the happening of an event therein stated;

(*b*) where it undertakes the payment of part only of the sum ordered to be paid;

(*c*) where, no place of payment being specified on the order, it undertakes the payment at a specified place, and not otherwise or elsewhere; or where, a place of payment being specified in the order, it undertakes the payment at some other place and not otherwise or elsewhere;

(*d*) where it undertakes the payment at a time other than that at which under the order it would be legally due.

Effect of material alteration.

87. Any material alteration of a negotiable instrument renders the same void as against any one who is a party thereto at the time of making such alteration and does not consent thereto, unless it was made in order to carry out the common intention of the original parties;

Alteration by indorsee.

and any such alteration, if made by an indorsee, discharges his indorser from all liability to him in respect of the consideration thereof.

The provisions of this section are subject to those of sections 20, 49, 86 and 125.

Acceptor or indorser bound notwithstanding previous alteration.

88. An acceptor or indorser of a negotiable instrument is bound by his acceptance or indorsement notwithstanding any previous alteration of the instrument.

Payment of instrument on which alteration is not apparent.

89. Where a promissory note, bill of exchange or cheque has been materially altered but does not appear to have been so altered,

or where a cheque is presented for payment which does not at the time of presentation appear to be crossed or to have had a crossing which has been obliterated,

payment thereof by a person or banker liable to pay, and paying the same according to the apparent tenor thereof at the time of payment and otherwise in due course, shall discharge such person or banker from all liability thereon; and such payment shall not be questioned by reason of the instrument having been altered or the cheque crossed.

(*Chapter VII.—Of Discharge from Liability on Notes, Bills and Cheques. Chapter VIII.—Of Notice of Dishonour.*)

90. If a bill of exchange which has been negotiated is, at or after maturity, held by the acceptor in his own right, all rights of action thereon are extinguished.

Extinguishment of rights of action on bill in acceptor's hands.

CHAPTER VIII.

Of Notice of Dishonour.

91. A bill of exchange is said to be dishonoured by non-acceptance when the drawee, or one of several drawees not being partners, makes default in acceptance upon being duly required to accept the bill, or where presentment is excused and the bill is not accepted.

Dishonour by non-acceptance.

Where the drawee is incompetent to contract, or the acceptance is qualified, the bill may be treated as dishonoured.

92. A promissory note, bill of exchange or cheque is said to be dishonoured by non-payment when the maker of the note, acceptor of the bill or drawee of the cheque makes default in payment upon being duly required to pay the same.

Dishonour by non-payment.

93. When a promissory note, bill of exchange or cheque is dishonoured by non-acceptance or non-payment, the holder thereof, or some party thereto who remains liable thereon, must give notice that the instrument has been so dishonoured to all other parties whom the holder seeks to make severally liable thereon, and to some one of several parties whom he seeks to make jointly liable thereon.

By and to whom notice should be given.

Nothing in this section renders it necessary to give notice to the maker of the dishonoured promissory note or the drawee or acceptor of the dishonoured bill of exchange or cheque.

94. Notice of dishonour may be given to a duly authorized agent of the person to whom it is required to be given, or, where he has died, to his legal representative, or, where he has been declared an insolvent, to his assignee; may be oral or written; may, if written, be sent by post; and may be in any form; but it must inform the party to whom it is given, either in express terms or by reasonable intendment, that the instrument has been dishonoured, and in what way, and that he will be held liable thereon; and it must be given within a reasonable time after dishonour, at the place of business or (in case such party has no place of business) at the residence of the party for whom it is intended.

Mode in which notice may be given.

If the notice is duly directed and sent by post and miscarries, such miscarriage does not render the notice invalid.

Party receiving must transmit notice of dishonour.

95. Any party receiving notice of dishonour must, in order to render any prior party liable to himself, give notice of dishonour to such party within a reasonable time, unless such party otherwise receives due notice as provided by section 93.

Agent for presentment.

96. When the instrument is deposited with an agent for presentment, the agent is entitled to the same time to give notice to his principal as if he were the holder giving notice of dishonour, and the principal is entitled to a further like period to give notice of dishonour.

When party to whom notice given is dead.

97. When the party to whom notice of dishonour is despatched is dead, but the party despatching the notice is ignorant of his death, the notice is sufficient.

When notice of dishonour is unnecessary.

98. No notice of dishonour is necessary—

(*a*) when it is dispensed with by the party entitled thereto;

(*b*) in order to charge the drawer when he has countermanded payment;

(*c*) when the party charged could not suffer damage for want of notice;

(*d*) when the party entitled to notice cannot after due search be found; or the party bound to give notice is, for any other reason, unable without any fault of his own to give it;

(*e*) to charge the drawers when the acceptor is also a drawer;

(*f*) in the case of a promissory note which is not negotiable;

(*g*) when the party entitled to notice, knowing the facts, promises unconditionally to pay the amount due on the instrument.

CHAPTER IX.

Of Noting and Protest.

Noting.

99. When a promissory note or bill of exchange has been dishonoured by non-acceptance or non-payment, the holder may cause such dishonour to be noted by a notary public upon the instrument, or upon a paper attached thereto, or partly upon each.

Such note must be made within a reasonable time after dishonour, and must specify the date of dishonour, the reason, if any, assigned for such

dishonour, or, if the instrument has not been expressly dishonoured, the reason why the holder treats it as dishonoured, and the notary's charges.

100. When a promissory note or bill of exchange has been dishonoured by non-acceptance or non-payment, the holder may, within a reasonable time, cause such dishonour to be noted and certified by a notary public. Such certificate is called a protest. **Protest.**

When the acceptor of a bill of exchange has become insolvent, or his credit has been publicly impeached, before the maturity of the bill, the holder may, within a reasonable time, cause a notary public to demand better security of the acceptor, and on its being refused may, within a reasonable time, cause such facts to be noted and certified as aforesaid. Such certificate is called a protest for better security. **Protest for better security.**

101. A protest under section 100 must contain— **Contents of protest.**

(*a*) either the instrument itself, or a literal transcript of the instrument and of everything written or printed thereupon;

(*b*) the name of the person for whom and against whom the instrument has been protested;

(*c*) a statement that payment or acceptance, or better security, as the case may be, has been demanded of such person by the notary public; the terms of his answer, if any, or a statement that he gave no answer or that he could not be found;

(*d*) when the note or bill has been dishonoured, the place and time of dishonour, and, when better security has been refused, the place and time of refusal;

(*e*) the subscription of the notary public making the protest;

(*f*) in the event of an acceptance for honour or of a payment for honour, the name of the person by whom, of the person for whom, and the manner in which, such acceptance or payment was offered and effected.

[1][A notary public may make the demand mentioned in clause (*c*) of this section either in person or by his clerk or, where authorized by agreement or usage, by registered letter.]

102. When a promissory note or bill of exchange is required by law to be protested, notice of such protest must be given instead of notice of dishonour, in the same manner and subject to the same conditions; but the notice may be given by the notary public who makes the protest. **Notice of protest.**

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[1] Ins. by the Negotiable Instruments Act, 1885 (2 of 1885), s. 5.

Protest for non-payment after dishonour by non-acceptance.

103. All bills of exchange drawn payable at some other place than the place mentioned as the residence of the drawee, and which are dishonoured by non-acceptance, may, without further presentment to the drawee, be protested for non-payment in the place specified for payment, unless paid before or at maturity.

Protest of foreign bills.

104. Foreign bills of exchange must be protested for dishonour when such protest is required by the law of the place where they are drawn.

When noting equivalent to protest.

[1]**[104A.** For the purposes of this Act, where a bill or note is required to be protested within a specified time or before some further proceeding is taken, it is sufficient that the bill has been noted for protest before the expiration of the specified time or the taking of the proceeding; and the formal protest may be extended at any time thereafter as of the date of the noting.]

CHAPTER X.

Of Reasonable Time.

Reasonable time.

105. In determining what is a reasonable time for presentment for acceptance or payment, for giving notice of dishonour and for noting, regard shall be had to the nature of the instrument and the usual course of dealing with respect to similar instruments; and, in calculating such time, public holidays shall be excluded.

Reasonable time of giving notice of dishononr.

106. If the holder and the party to whom notice of dishonour is given carry on business or live (as the case may be) in different places, such notice is given within a reasonable time if it is despatched by the next post or on the day next after the day of dishonour.

If the said parties carry on business or live in the same place, such notice is given within a reasonable time if it is despatched in time to reach its destination on the day next after the day of dishonour.

Reasonable time for transmitting such notice.

107. A party receiving notice of dishonour, who seeks to enforce his right against a prior party, transmits the notice within a reasonable time if he transmits it within the same time after its receipt as he would have had to give notice if he had been the holder.

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[1] Ins. by the Negotiable Instruments Act, 1885 (2 of 1885), s. 6.

(Chapter XI.—Of Acceptance and Payment for Honour and Reference in Case of Need.)

CHAPTER XI.

Of Acceptance and Payment for Honour and Reference in Case of Need.

Acceptance for honour.

108. When a bill of exchange has been noted or protested for non-acceptance or for better security, any person not being a party already liable thereon may, with the consent of the holder, by writing on the bill, accept the same for the honour of any party thereto. [1]* * * *

How acceptance for honour must be made.

109. A person desiring to accept for honour must, [2][by writing on the bill under his hand,] declare that he accepts under protest the protested bill for the honour of the drawer or of a particular indorser whom he names, or generally for honour [3]* * * * *

Acceptance not specifying for whose honour it is made.

110. Where the acceptance does not express for whose honour it is made, it shall be deemed to be made for the honour of the drawer.

Liability of acceptor for honour.

111. An acceptor for honour binds himself to all parties subsequent to the party for whose honour he accepts to pay the amount of the bill if the drawee do not: and such party and all prior parties are liable in their respective capacities to compensate the acceptor for honour for all loss or damage sustained by him in consequence of such acceptance.

But an acceptor for honour is not liable to the holder of the bill unless it is presented, or (in case the address given by such acceptor on the bill is a place other than the place where the bill is made payable) forwarded for presentment, not later than the day next after the day of its maturity.

When acceptor for honour may be charged.

112. An acceptor for honour cannot be charged unless the bill has at its maturity been presented to the drawee for payment, and has been dishonoured by him, and noted or protested for such dishonour.

Payment for honour.

113. When a bill of exchange has been noted or protested for non-payment, any person may pay the same for the honour of any party liable to pay the same, provided that the person so paying [4][or his agent in that behalf] has previously declared before a notary public the party for whose honour he pays, and that such declaration has been recorded by such notary public.

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[1] The last portion of the section was rep. by the Negotiable Instruments Act, 1885 (2 of 1885), s. 7.

[2] Subs. by s. 8, *ibid.*, for "in the presence of a notary public subscribe the bill with his own hand and".

[3] The words "and such declaration must be recorded by the notary in his register" rep. by s. 8, *ibid.*

[4] Ins. by s. 9, *ibid.*

(Chapter XI.—Of Acceptance and Payment for Honour and Reference in Case of Need. Chapter XII.—Of Compensation.)

Right of payer for honour.

114. Any person so paying is entitled to all the rights, in respect of the bill, of the holder at the time of such payment, and may recover from the party for whose honour he pays all sums so paid, with interest thereon and with all expenses properly incurred in making such payment.

Drawee in case of need.

115. Where a drawee in case of need is named in a bill of exchange, or in any indorsement thereon, the bill is not dishonoured until it has been dishonoured by such drawee.

Acceptance and payment without protest.

116. A drawee in case of need may accept and pay the bill of exchange without previous protest.

CHAPTER XII.

OF COMPENSATION.

Rules as to compensation.

117. The compensation payable in case of dishonour of a promissory note, bill of exchange or cheque, by any party liable to the holder or any indorsee, shall [1]* * * * be determined by the following rules:—

(*a*) the holder is entitled to the amount due upon the instrument, together with the expenses properly incurred in presenting, noting and protesting it;

(*b*) when the person charged resides at a place different from that at which the instrument was payable, the holder is entitled to receive such sum at the current rate of exchange between the two places;

(*c*) an indorser who, being liable, has paid the amount due on the same is entitled to the amount so paid with interest at six per centum per annum from the date of payment until tender or realization thereof, together with all expenses caused by the dishonour and payment;

(*d*) when the person charged and such indorser reside at different places, the indorser is entitled to receive such sum at the current rate of exchange between the two places;

(*e*) the party entitled to compensation may draw a bill upon the party liable to compensate him, payable at sight or on demand, for the amount due to him, together with all expenses properly incurred by him. Such bill must be accompanied by the instrument dishonoured and the protest thereof (if any). If such bill is dishonoured, the party dishonouring the same is liable to

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[1] Certain words were rep. by the Negotiable Instruments (Interest) Act, 1926 (30 of 1926), s. 3.

make compensation thereof in the same manner as in the case of the original bill.

CHAPTER XIII.

Special Rules of Evidence.

118. Until the contrary is proved, the following presumptions shall be made :

Presumptions as to negotiable instruments—of consideration;

(*a*) that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration;

as to date;

(*b*) that every negotiable instrument bearing a date was made or drawn on such date;

as to time of acceptance;

(*c*) that every accepted bill of exchange was accepted within a reasonable time after its date and before its maturity;

as to time of transfer;

(*d*) that every transfer of a negotiable instrument was made before its maturity;

as to order of indorsement;

(*e*) that the indorsements appearing upon a negotiable instrument were made in the order in which they appear thereon;

as to stamp;

(*f*) that a lost promissory note, bill of exchange or cheque was duly stamped;

that holder is a holder in due course.

(*g*) that the holder of a negotiable instrument is a holder in due course: provided that, where the instrument has been obtained from its lawful owner, or from any person in lawful custody thereof, by means of an offence or fraud, or has been obtained from the maker or acceptor thereof by means of an offence or fraud, or for unlawful consideration, the burthen of proving that the holder is a holder in due course lies upon him.

Presumption on proof of protest.

119. In a suit upon an instrument which has been dishonoured, the Court shall, on proof of the protest, presume the fact of dishonour, unless and until such fact is disproved.

Estoppel against denying original validity of instrument.

120. No maker of a promissory note, and no drawer of a bill of exchange or cheque, and no acceptor of a bill of exchange for the honour of the drawer, shall, in a suit thereon by a holder in due course, be permitted to deny the validity of the instrument as originally made or drawn.

Estoppel against denying capacity of payee to indorse.

121. No maker of a promissory note and no acceptor of a bill of exchange [1][payable to order] shall, in a suit thereon by a holder in due course, be permitted to deny the payee's capacity, at the date of the note or bill, to indorse the same.

Estoppel against denying signature or capacity of prior party.

122. No indorser of a negotiable instrument shall, in a suit thereon by a subsequent holder, be permitted to deny the signature or capacity to contract of any prior party to the instrument.

CHAPTER XIV.

Of Crossed Cheques.

Cheque crossed generally.

123. Where a cheque bears across its face an addition of the words "and company" or any abbreviation thereof, between two parallel transverse lines, or of two parallel transverse lines simply, either with or without the words "not negotiable," that addition shall be deemed a crossing and the cheque shall be deemed to be crossed generally.

Cheque crossed specially.

124. Where a cheque bears across its face an addition of the name of a banker, either with or without the words "not negotiable," that addition shall be deemed a crossing, and the cheque shall be deemed to be crossed specially, and to be crossed to that banker.

Crossing after issue.

125. Where a cheque is uncrossed, the holder may cross it generally or specially.

Where a cheque is crossed generally, the holder may cross it specially.

Where a cheque is crossed generally or specially, the holder may add the words "not negotiable."

Where a cheque is crossed specially, the banker to whom it is crossed may again cross it specially to another banker, his agent, for collection.

Payment of cheque crossed generally.

126. Where a cheque is crossed generally, the banker on whom it is drawn shall not pay it otherwise than to a banker.

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[1] Subs. by the Negotiable Instruments (Amendment) Act, 1919 (8 of 1919), s. 5, for "payable to, or to the order of, a specified person".

Where a cheque is crossed specially, the banker on whom it is drawn shall not pay it otherwise than to the banker to whom it is crossed, or his agent for collection. Payment of cheque crossed specially.

127. Where a cheque is crossed specially to more than one banker, except when crossed to an agent for the purpose of collection, the banker on whom it is drawn shall refuse payment thereof. Payment of cheque crossed specially more than once.

128. Where the banker on whom a crossed cheque is drawn has paid the same in due course, the banker paying the cheque, and (in case such cheque has come to the hands of the payee) the drawer thereof, shall respectively be entitled to the same rights, and be placed in the same position in all respects, as they would respectively be entitled to and placed in if the amount of the cheque had been paid to and received by the true owner thereof. Payment in due course of crossed cheque.

129. Any banker paying a cheque crossed generally otherwise than to a banker, or a cheque crossed specially otherwise than to the banker to whom the same is crossed, or his agent for collection, being a banker, shall be liable to the true owner of the cheque for any loss he may sustain owing to the cheque having been so paid. Payment of crossed cheque out of due course.

130. A person taking a cheque crossed generally or specially, bearing in either case the words "not negotiable," shall not have, and shall not be capable of giving, a better title to the cheque than that which the person from whom he took it had. Cheque bearing "not negotiable."

131. A banker who has in good faith and without negligence received payment for a customer of a cheque crossed generally or specially to himself shall not, in case the title to the cheque proves defective, incur any liability to the true owner of the cheque by reason only of having received such payment. Non-liability of banker receiving payment of cheque.

[1][*Explanation.*—A banker receives payment of a crossed cheque for a customer within the meaning of this section notwithstanding that he credits his customer's acount with the amount of the cheque before receiving payment thereof].

[2][**131A.** The provisions of this Chapter shall apply to any draft, as defined in section 85A, as if the draft were a cheque]. Application of Chapter to drafts.

CHAPTER XV.

Of Bills in Sets.

132. Bills of exchange may be drawn in parts, each part being numbered and containing a provision that it shall continue payable only Set of bills.

[1] Ins. by the Negotiable Instruments (Amendment) Act, 1922 (18 of 1922), s. 2.
[2] Ins. by the Negotiable Instruments (Amendment) Act, 1947 (33 of 1947), s. 2.

so long as the others remain unpaid. All the parts together make a set; but the whole set constitutes only one bill, and is extinguished when one of the parts, if a separate bill, would be extinguished.

Exception.—When a person accepts or indorses different parts of the bill in favour of different persons, he and the subsequent indorsers of each part are liable on such part as if it were a separate bill.

Holder of first acquired part entitled to all.

133. As between holders in due course of different parts of the same set he who first acquired title to his part is entitled to the other parts and the money represented by the bill.

CHAPTER XVI.

OF INTERNATIONAL LAW.

Law governing liability of maker, acceptor or indorser of foreign instrument.

134. In the absence of a contract to the contrary, the liability of the maker or drawer of a foreign promissory note, bill of exchange or cheque is regulated in all essential matters by the law of the place where he made the instrument, and the respective liabilities of the acceptor and indorser by the law of the place where the instrument is made payable.

Illustration.

A bill of exchange was drawn by A in California, where the rate of interest is 25 per cent., and accepted by B, payable in Washington, where the rate of interest is 6 per cent. The bill is indorsed in [~~the State~~] and is dishonoured. An action on the bill is brought against B in [~~the State~~]. He is liable to pay interest at the rate of 6 per cent. only: but, if A is charged as drawer, A is liable to pay interest at the rate of 25 per cent.

Law of place of payment governs dishonour.

135. Where a promissory note, bill of exchange or cheque is made payable in a different place from that in which it is made or indorsed, the law of the place where it is made payable determines what constitutes dishonour and what notice of dishonour is sufficient.

Illustration.

A bill of exchange drawn and indorsed in [~~the State~~] but accepted payable in France, is dishonoured. The indorsee causes it to be protested for such dishonour, and gives notice thereof in accordance with the law of France, though not in accordance with the rules herein contained in respect of bills which are not foreign. The notice is sufficient.

Instrument made, etc., out of the States but in accordance with the law of the States.

136. If a negotiable instrument is made, drawn, accepted or indorsed [2][outside] [~~the States~~] but in accordance with the [3][law of [~~the States~~]] the circumstance that any agreement evidenced by such instrument is invalid according to the law of the country wherein it was entered into does not invalidate any subsequent acceptance or indorsement made thereon [4][within [~~the States~~]]

[1] Subs. by the A. O. 1950 for "the Provinces" which had been subs. by the A. O. 1948 for "British India".

[2] Subs. by the A. O. 1950 for "outside the Provinces of India" which had been subs. by the A. O. 1948 for "out of British India".

[3] Subs. by the A. O. 1950 for "law of the Provinces of India" which had been subs. by the A. O. 1948 for "law of British India".

[4] Subs. by the A. O. 1950 for "within the Provinces of India" which had been subs. by the A. O. 1948 for "in British India".

(Chapter XVI.—Of International Law. Chapter XVII.—Notaries Public.—(Schedule.)

137. The law of any foreign country [1]~~[or Part B State]~~ regarding promissory notes, bills of exchange and cheques shall be presumed to be the same as that of [2]~~[the States]~~ unless and until the contrary is proved.

Presumption as to foreign law.

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[3][CHAPTER XVII.

NOTARIES PUBLIC.

138. The [4][Central Government] may, from time to time, by notification in the Official Gazette, appoint any person, by name or by virtue of his office, to be a notary public under this Act and to exercise his functions as such within any local area, and may, by like notification, remove from office any notary public appointed under this Act.

Power to appoint notaries public.

139.[5] The [4][Central Government] may, from time to time, by notification in the Official Gazette, make rules consistent with this Act for the guidance and control of notaries public appointed under this Act, and may, by such rules (among other matters), fix the fees payable to such notaries.]

Power to make rules for notaries public.

SCHEDULE.—[Enactments repealed.] *Rep. by the Amending Act, 1891 (XII of 1891).*

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[1] Subs. by the A. O. 1950 for the words "or Acceding State" which were ins. by the A. O. 1948.

[2] Subs. by the A. O. 1950 for "the Provinces of India" which had been subs. by the A. O. 1948 for "British India".

[3] Ch. XVII was added by the Negotiable Instruments Act, 1885 (2 of 1885), s. 10.

[4] Subs. by the A. O. 1937 for "L. G." which had been subs. for "G. G. in C." by the Decentralization Act, 1914 (4 of 1914), s. 2 and Sch., Part I.

[5] For rules under this section, *see* Gen. R. & O., Vol. II, p. 279.

INDEX

	PAGE
Agriculturists' Relief—*see* Dekkhan Agriculturists' Relief Act, 1879	521
Arms—*see* Indian Arms Act, 1878	484
Banki Laws Act, 1881	622
Bhaunagar Act, 1876	331
Bombay Municipal Debentures Act, 1876	308
Bombay Revenue Jurisdiction Act, 1876	300
Broach and Kaira Incumbered Estates Act, 1877	370
Broach and Kaira Incumbered Estates Act, 1881	608
Canal—*see* Northern India Canal and Drainage Act, 1873	205
Central Provinces Laws Act, 1875	273
Chota Nagpur Incumbered Estates Act, 1876	278
Civil Courts—*see* Madras Civil Courts Act, 1873	191
Coinage—*see* Native Coinage Act, 1876	297
Contract—*see* Indian Contract Act, 1872	89
Customs—*see* Sea Customs Act, 1878	387
Debentures—*see* Bombay Municipal Debentures Act, 1876	308
Dekkhan Agriculturists' Relief Act, 1879	521
Drainage—*see* Northern India Canal and Drainage Act, 1873	205
Dramatic Performances Act, 1876	328
Elephants Preservation Act, 1879	515
Endowment—*see* Husainabad Endowment	498
Estates—*see* Chota Nagpur Incumbered Estates Act, 1876	278
" *see* Broach and Kaira Incumbered Estates Act, 1877	370
" *see* Broach and Kaira Incumbered Estates Act, 1881	608
Evidence—*see* Indian Evidence Act, 1872	1
Fairways—*see* Obstructions in Fairways Act, 1881	605
Ferries—*see* Northern India Ferries Act, 1878	504
Foreign Recruiting Act, 1874	248
Fort William Act, 1881	601
Government Savings Banks Act, 1873	201
Hackney-carriage Act, 1879	517
Husainabad Endowment	498
Indian Arms Act, 1878	484
Indian Christian Marriage Act, 1872	153
Indian Contract Act, 1872	89
Indian Evidence Act, 1872	1
Indian Law Reports Act, 1875	272
Indian Majority Act, 1875	270
Indian Oaths Act, 1873	235
Indian Treasure-trove Act, 1878	380

PAGE

Kazis Act, 1880 584
Law Reports—*See* Indian Law Reports Act, 1875 272
Laws Local Extent Act, 1874 250
Legal Practitioners Act, 1879 559
Madras Civil Courts Act, 1873 191
Magistrates—*see* Presidency Magistrates (Court-fees) Act, 1877 . . . 369
Majority—*see* Indian Majority Act, 1875 270
Marriage—*see* Special Marriage Act, 1872 65
" *see* Indian Christian Marriage Act, 1872 153
Married Women's Property Act, 1874 244
Municipal Taxation Act, 1881 598
Murderous Outrages—*see* Punjab Murderous Outrages (Amendment) Act, 1877 369
Native Coinage Act, 1876 297
Negotiable Instruments Act, 1881 623
Northern India Canal and Drainage Act, 1873 205
Northern India Ferries Act, 1878 504
North-Western Provinces Village and Road Police Act, 1873 240
Oaths—*see* Indian Oaths Act, 1873 235
Obstructions in Fairways Act, 1881 605
Opium Act, 1878 371
Oudh Laws Act, 1876 310
Outrages—*see* Punjab Murderous Outrages (Amendment) Act, 1877 . . 369
Pension—*see* Taj Mahal's Pension Act, 1881 594
Police—*see* North-Western Provinces Village and Road Police Act, 1873 . 240
Preservation—*see* Elephants Preservation Act, 1879 515
Presidency Magistrates (Court-fees) Act, 1877 369
Punjab Laws Act, 1872 77
Punjab Laws (Amendment) Act, 1878 498
Punjab Murderous Outrages (Amendment) Act, 1877 369
Raipur and Khattra Laws Act, 1879 579
Recruiting—*see* Foreign Recruiting Act, 1874 248
Relief—*see* Specific Relief Act, 1877 335
Religious Societies Act, 1880 580
Revenue Jurisdiction—*see* Bombay Revenue Jurisdiction Act, 1876 . . . 300
Savings Banks—*see* Government Savings Banks Act, 1873 201
Sea Customs Act, 1878 387
Societies—*see* Religious Societies Act, 1880 580
Special Marriage Act, 1872 65
Specific Relief Act, 1877 335
Taj Mahals Pension Act, 1881 594
Taxation—*see* Municipal Taxation Act, 1881 598
Treasure-trove—*see* Indian Treasure-trove Act, 1878 380
Vaccination Act, 1880 585
Women's Property—*see* Married Women's Property Act, 1874 . . . 244